Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1549

ROSEMARY BAYOLO GEECK, ., et al.,
Plaintiffs-Appellants,

versus

THE CITY OF NEW ORLEANS, et al.,
Defendants-Appellees.

On Appeal from the
Supreme Court of the State of Louisiana

STATEMENT AS TO JURISDICTION

(Attorneys listed on inside cover)

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CONSOLIDATED WITH

JACKSON HOMESTEAD ASSOCIATION, Individually and on Behalf of Others Similarly Situated, and on Behalf of Certain of its Borrowers and SOUTH PINES, INC., Individually and on Behalf of Others Similarly Situated.

Plaintiffs and Appellants,

versus

ERROLL WILLIAMS, Director of Finance of the City of New Orleans, et al.,

Defendants and Appellees,

On Appeal from the Supreme Court of the State of Louisiana.

STATEMENT AS TO JURISDICTION.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1979

No.

ACORN for Itself and its Members,
PAUL COX, STEVE HOLT, BEULAH LABOSTRIE
and BRENDA QUANT,
Plaintiffs and Appellants,
versus
CITY OF NEW ORLEANS, ERNEST MORIAL,
SIDNEY BARTHELEMY, JOSEPH GIARRUSSO,
FRANK FRIEDLER, JIM SINGLETON,
MIKE EARLY, BROD BAGERT, PHILIP CIACCIO,
ERROLL WILLIAMS and PATRICK KOLOSKI,
Defendants and Appellees,

CONSOLIDATED WITH

MRS. ROSEMARY BAYOLO, Wife of/and
JOSEPH S. GEECK, JR.,
Plaintiffs and Appellants,

versus

ERROL WILLIAMS, Director of Finance of the
City of New Orleans, et al.,
Defendants and Appellees,

CONSOLIDATED WITH

MRS. JANET, Wife of/and EDWIN H. HEATON et al.,
Plaintiffs and Appellants,

versus

ERROLL WILLIAMS, Director of Finance of
the City of New Orleans, et al.,
Defendants and Appellees,

CONSOLIDATED WITH

JACKSON HOMESTEAD ASSOCIATION,
Individually and on Behalf of Others
Similarly Situated, and on Behalf of
Certain of its Borrowers and
SOUTH PINES, INC., Individually and
on Behalf of Others Similarly Situated,
Plaintiffs and Appellants,

versus

ERROL WILLIAMS, Director of Finance of the
City of New Orleans, et al.,
Defendants and Appellees.

On Appeal from the
Supreme Court of the State of Louisiana.

STATEMENT AS TO JURISDICTION

MAY IT PLEASE THE COURT:

This is an appeal from the Judgment of the Supreme Court of the State of Louisiana entered on January 11, 1980, refusing rehearing on the reversal of the Judgment of the Civil District Court for the Parish of Orleans. The appellants submit this statement to show that the Supreme Court of the United States has jurisdiction over the appeal and that the Federal questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their solution.

I

OPINIONS BELOW

The opinion of the District Court (appendix C, infra, pp. 38a-43a) is not reported.

The opinion of the Supreme Court of Louisiana (appendix D, pp. 44a-67a infra) is reported at 377 So.2d 1206 (La. 1980).

II

JURISDICTION

The appellants, Mrs. Rosemary Bayolo, wife of/and Joseph S. Geeck, Jr., Mrs. Janet, wife of/and Edwin H. Heaton, et al. and Jackson Homestead Association, et

al. filed class actions in the Civil District Court, Orleans Parish, Louisiana, attacking the legality and constitutionality of Ordinance No. 7009 M.C.S., as amended, of the City of New Orleans levying a $100.00 annual special real property service charge on each parcel of real property separately listed and/or assessed on the tax rolls of the City of New Orleans for the year 1979 and for each year thereafter. The Civil District Court for Orleans Parish found the service charge to be a tax and that the total lack of relationship between the unit sought to be taxed and the tax imposed strikes the charge with constitutional invalidity and that the imposition of the tax violates the equal protection requirements of the federal constitution and is therefore invalid. The Supreme Court of Louisiana by a vote of 4 to 3 of the Justices on that Court reversed the Civil District Court's judgment. The final judgment of the Supreme Court of Louisiana was entered on January 11, 1980, upon the refusal to grant a rehearing by that Court.

This is a proceeding brought by the appellants herein challenging the imposition of a flat one hundred dollars per "parcel" tax on the ground that the Municipal ordinance under which the said tax is imposed is repugnant to the 14th Amendment to the Constitution of the United States. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(2). Notice of appeal to this Court was timely filed on February 6, 1980 (Appendix F).

III

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment XIV, §1 of the Constitution of the United States:

> "§1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Municipal Ordinance of the City of New Orleans No. 7009 M.C.S., as amended (Appendix A) provides in pertinent part:

> "Each owner of real property within the limits of the City of New Orleans shall pay, and there is hereby levied upon the owner thereof, an annual special real property service charge of one hundred dollars for each parcel of real property owned by him and separately listed and/or assessed on the tax rolls of the City of New Orleans for the year 1979 and for each year thereafter."

The *ad valorem* tax provision of the Louisiana Constitution of 1974, Article 6:

> §26. (A) *"Parish Tax for General Purposes; Millage Limits; Increase.* The governing authority of a parish may levy annually an ad valorem tax for general purposes not to exceed four mills on the dollar of assessed valuation. However, in Orleans Parish the limitation shall be seven mills, and in Jackson Parish the limitation shall be five mills. Millage rates may be increased in any parish when approved by a majority of the electors voting thereon in an election held for that purpose."[1]

IV

QUESTIONS PRESENTED

1.) Whether Municipal ordinance 7009 M.C.S., as amended violates the equal protection clause of Amendment XIV, §1 of the United States Constitution in that it is an unequal application of a tax with an unequal and disproportionate result, thus striking it with constitutional infirmity.

2.) Whether the imposition of such a tax violates the taxing scheme provided the Louisiana State Constitution, and thereby circumventing the process of taxation that requires approval by the majority in a

1 The New Orleans City Council is the governing authority of Orleans Parish.

vote of the electorate to override thus denying those paying the tax due process of law.

V

STATEMENT OF THE CASE

The City of New Orleans, like many municipalities throughout the United States in these inflationary times, is constantly seeking to raise revenues for the City's general operations. The City of New Orleans, obviously frustrated by the tax rate on the assessed valuations of real property, enacted an ordinance levying, in effect, a $100.00 increase in real estate taxes on each parcel of property listed on the assessment tax rolls in the City of New Orleans. The City enacted Ordinance No. 7009 M.C.S., as amended, that states,

> "[E]ach owner of real property within the limits of the City of New Orleans shall pay, and there is hereby levied upon the owner thereof, an annual special real property service charge of One Hundred ($100.00) Dollars for each parcel of real property owned by him and separately listed and/or assessed on the tax rolls of the City of New Orleans for the year 1979 and for each year thereafter."

Appellants herein paid the charge under protest (although it was unclear at the time that they could do so, because the levy was characterized as a "service charge" instead of a tax) and filed suit for recovery of

the illegal tax within the thirty (30) day period provided by law. Louisiana Revised Statutes of 1950, Title 47, §2110.

Pursuant to the Civil District Court's order of October 19, 1979 appellants herein were certified as a class action and notices to members of the classes were duly published. It was later stipulated that no members of the class notified the office of the Clerk of Court of the Civil District Court for the Parish of Orleans that they did not wish to be a member of the class.

Before the trial on the merits the attorneys for the plaintiffs representing the class and the City of New Orleans entered into a written stipulation of facts that was introduced at the trial as Exhibit Heaton-Geeck No. 4. Appendix B, pp. 30a-35a. Certain salient facts of the stipulation are:

The designation as a "special real property service charge" in Ordinance No. 7009 M.C.S., as amended, notwithstanding, no specific service is provided for the owners of real property in the City of New Orleans and its adoption was to provide revenue for the operation and maintenance of the City of New Orleans.

Parcels of real property separately listed and/or assessed on tax rolls of the City of New Orleans for the year 1979 have different assessed values.

The real property listed and/or assessed on the tax rolls of the City of New Orleans vary widely. For example, in one assessment district there is the Parc Fontaine apartment complex located on five (5) squares of ground, or approximately 22 acres. It has 794 rental units, and has a market value of ten million dollars. The property is assessed as one (1) unit or parcel because it was acquired as a single unit on one conveyance office book (C.O.B.) transaction and therefore reflects one *ad valorem* tax bill, even though it has a substantial value on it. The Parc Fontaine complex is considered one parcel and is charged a one hundred dollars special real property service charge under the City's ordinances. A single family residence in the same subdivision having a seventy-five thousand dollar value also has one assessment, is considered one parcel and is taxed the $100.00 special real property service charge under the City's ordinances. A single family house on two lots may have two assessments, one for each lot, and is considered two parcels and taxed $200.00 for the special real property service charge.

The record shows that thirty (30) different lots which may be considered thirty (30) different parcels on the tax rolls; or may be consolidated under one assessment and thereby considered one parcel on the tax rolls. In the former case the property is taxed three thousand dollars under the said ordinances (30 x $100.00) and in the latter case the same amount of property is taxed only one hundred dollars under the same ordinances.

Under the City's ordinances the $100.00 service charge is levied on a "parcel", which is undefined and is anything that appears on a property owner's *ad valorem* tax bill.

The District Judge, in finding that the ordinances are illegal and unconstitutional and in ordering refunds, gave the following reasons:

> "Getting to the real estate charge. I also find that it lacks justification as a service charge since there was utterly no effort to dedicate anywhere the revenue produced by that imposition for specific benefits of the persons taxed. Mr. Ballin made a very, very persuasive argument concerning the inherent scheme of the Constitution in suggesting that only *ad valorem* taxes were contemplated as being authorized to local government, and if I didn't have another means of resolving the case I may have to confront that issue with more study, but I find that the total lack of relationship between the unit sought to be taxed and the tax imposed strikes the charge with Constitutional invalidity.
>
> "It may be that bales of cotton are of unequal value: but they are susceptible of measurement. I suppose a bale is some sort of merchant's measure. We know bushels and acreage and pounds and all the other lists, they

> were all specific, but a parcel of ground as described in the ordinance and as implemented or as created by the assessors is so utterly unequal in its application as to force the conclusion that the imposition of the tax violates the equal protection requirements of the state and federal constitution, and I find the tax unequal and therefore invalid."

VI

RAISING OF THE FEDERAL QUESTIONS

The appellants in their original petitions raised the following federal questions that they are now asking this Court to review:

The ordinances of the City imposing the $100.00 service charge violates the equal protection clause of the 14th Amendment, because of the total lack of relationship between the unit sought to be taxed and the tax imposed.

The invalidity of the ordinance under the 14th Amendment to the United States Constitution was the sole basis under which the service charge was invalidated by the Civil District Court (Fedoroff, J.,) and it was on that basis that the City of New Orleans appealed. The question of denial of due process was also presented by the plaintiffs and appellants in their petitions filed in the court of original jurisdiction, the Civil District Court for the Parish of Orleans.

In the decision of the Louisiana Supreme Court reversing the Civil District Court, the equal protection issue was reversed on a vote of four to three. Each of the dissenting Justices filed separate dissenting opinions all of which are attached hereto as Appendix E, pages 68a-76a.

VII

THE FEDERAL QUESTIONS NOW PRESENTED FOR CONSIDERATION ARE SUBSTANTIAL

The City of New Orleans, under the provisions of the Louisiana Constitution adopted by the people of Louisiana in 1974, can increase the *ad valorem* tax on real estate located in Orleans Parish only when approved by a majority of the electors voting thereon in an election held for that purpose. Article 6, Section 26, Louisiana Constitution of 1974.

Without calling an election and without receiving the approval of the majority of the electors, the City of New Orleans passed the ordinances under attack levying a $100.00 "annual special real property service charge" on the owner of real property within the limits of the City of New Orleans (which has coextensive boundaries with Orleans Parish) for each parcel of real property owned by him and separately listed and/or assessed on the tax rolls of the City for 1979 and for each year thereafter.

The City of New Orleans concedes, as it must, that no special benefit whatsoever is received by the owner of the real estate, in exchange for payment of the $100.00 service charge, and in fact the funds collected under the said special charge are placed into the City's general fund for the everyday usual expenses of the City, just as is the *ad valorem* tax collected by the City. The provisions for collecting and enforcing the $100.00 service charge are the same as those provided for the collection and enforcement of the *ad valorem* tax on real property.

The United States Supreme Court has repeatedly stated that the name by which a political subdivision may choose for a tax is completely immaterial when determining the federal rights of the people under the Constitution of the United States and its Amendments. In the case of *Dawson v. Kentucky Distillers and Warehouse Co.*, 255 U.S. 288, at 292, this Court aptly stated:

> "The name by which a tax is described in the statute is, of course, immaterial. Its character must be determined by its incidents."

This Court further stated in the *Dawson* case that a tax on the ownership of property is clearly a taxation on the property, as follows:

> "To levy a tax by reason of ownership of property is to tax the property." [255 U.S. at 294]

Succinctly stated, the paramount constitutional issue presented in this case is that the ordinances of the City of New Orleans by establishing a class defined as "each parcel of real property separately listed and/or assessed" on the tax rolls and imposing the same tax of $100.00 upon each parcel, are not founded upon a *reasonable* distinction but, on the contrary, are arbitrarily and clearly discriminatory, because the uncontradicted evidence shows that such class includes properties of most diverse nature, to-wit; small lots, large tracts, single homes, large apartment buildings, and office buildings.

> ". . . [A] system which imposes the same taxes upon every species of property, irrespective of its nature of condition or class, will be destructive of the principle of uniformity and equality in taxation and of a just adaptation of property to its burden." *Pacific Express Co. vs. Seibert,* 142 U.S. 339, at 351.

While, on the surface, each "parcel of property" appears to be a class, the members of the class have only one thing in common, to-wit; a "parcel" or real property, but the differences within that class are of such magnitude that the class must be considered to be artificial and invidiously discriminatory. There are members included in that class which are quite unlike and unequal. It is constitutionally impermissible to make the unlike indistinguishable by attaching a common label to them.

Uniformity within a class means that all persons under the same circumstances and conditions are treated alike. If they are treated differently, there is arbitrary discrimination and as to classification the reverse is just as true. If persons under different circumstances — and the circumstances of the members of the class consisting of all parcels of land are in very different circumstances — are placed in one class there is unjust and arbitrary discrimination. *Kahn v. Shelvin,* 416 U.S. 351.

The United States Supreme Court in the case of *Sunday Lake Iron Co. v. Wakefield,* 247 U.S. 350, at 352-53, stated as follows:

> "The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents."

The effect of the City ordinances is the levy of a tax which is intentionally and arbitrarily disproportionate to the assessed values of the properties listed on the tax rolls. The property owners (particularly the small homeowners) are being subjected to a grossly unequal burden of taxation since the only incident that gives rise to the $100.00 service charge is the ownership of real property without regard to a like rate or the assess-

ed value of the real property listed on the tax rolls. Obviously, the ordinances are arbitrary, capricious and invidiously discriminatory.

The trial judge in holding the ordinances unconstitutional found, as follows:

> "I find that the total lack of relationship between the unit sought to be taxed and the tax imposed strikes the charge with constitutional invalidity."

The Louisiana Supreme Court reversed the trial judge's finding and held that the $100.00 service charge is a specific tax based upon a reasonable classification. There is, however, absolutely no equal and uniform treatment within the class. The $100.00 service charge is levied not at a like rate but at a flat rate regardless of its assessed value listed on the tax rolls. Other than for the convenience of the collection of taxes, facilitated by the unit upon which the $100.00 service charge is imposed, there appears from the City's ordinances no particular classification let alone a reasonable one. Here there is no classification that rests upon "some ground of difference for a fair and substantial relationship to the object of the legislation, so that all persons similarly circumstanced shall be treated alike."

In the case of *Ohio Oil Co. v. Conway*, 281 U.S. 146 at 160, the United States Supreme Court stated, as follows:

> "With all this freedom of action, there is a point beyond which the State can not go without violating the equal protection clause. The State may classify broadly the subjects of taxation, but in doing so it must proceed upon a rational basis. The State is not at liberty to resort to a classification that is palpably arbitrary. The rule is generally stated to be that the classification 'must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' *Royster Guano Company v. Virginia*, 253 U.S. 412, 415; *Louisville Gas Company v. Coleman*, 27 U.S. 32, 37; *Air-Way Corporation v. Day*, 266 U.S. 71, 85; *Schlesinger v. Wisconsin*, 270 U.S. 71, 85; *Schlesinger v. Wisconsin*, 270 U.S. 230, 240."

The assumptions that the unit within the class selected by the City's ordinances to bear the burden of taxation is convenient to facilitate the collection of the tax or that *all* property owners can afford to pay made by the majority of the Louisiana Supreme Court, are illusory and do not justify that court in sustaining its validity. The United States Supreme Court in the case of *Schlesinger v. Wisconsin*, 270 U.S. 230 at 240, determined that the mere fact the incident sought to be taxed is convenient to facilitate collection by the taxing authority does not constitute a reasonable classification, stated as follows:

"The presumption and consequent taxation are defended upon the theory that, exercising judgment and discretion, the legislature found them necessary in order to prevent evasion of inheritance taxes. That is to say, 'A' may be required to submit to an exactment forbidden by the Constitution if this seems necessary in order to enable the State readily to collect lawful charges against 'B'. Rights guaranteed by the federal Constitution are not to be so lightly treated; they are superior to this supposed necessity. The State is forbidden to deny due process of law or the equal protection of the laws for any purpose whatsoever."

VIII

CONCLUSION

The honorable trial Judge in this matter, who heard first hand the testimony of the witnesses now contained in the record of this matter, and heard the arguments of counsel, concluded that the class adopted by the City's ordinances is totally unrelated to any reasonable unit of measure, which would allow it to be applied in conformance with the 14th Amendment to the United States Constitution. The Louisiana Supreme Court has reversed the decision of the trial Judge, by the slim margin of four to three of its members. The questions presented by this appeal are substantial and of broad public importance. Probable jurisdiction should therefore be noted.

The incident of taxation or the unit sought to be taxed under the City's Ordinances renders them manifestly arbitrary and capricious. The taxation invoked under the City's Ordinances contain no classification that rests upon some ground of difference for a fair and substantial relationship to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.

The only justification given by the Louisiana Supreme Court in reversing the Trial Court's finding that the City's Ordinances violate the equal protection clause of the Fourteenth Amendment of the United States Constitution was that the incident of taxation or the unit sought to be taxed by the City was convenient and that the property owners could afford to pay the tax which would be used to defray the everyday expenses of the municipality that are obviously not based upon a "parcel" or the unit taxed. Those owners of a parcel of real property who are poor and whose properties are of insignificant value as compared to others are more particularly entitled to the relief herein sought.

Accordingly, the plaintiffs and appellants respectfully pray that this Court recognize probable jurisdiction so that their rights guaranteed to them under the Fourteenth Amendment of the United States Constitution be given proper protection and that they be relieved from the palpably arbitrary and capricious treatment that has been visited upon them at the hands of the City of New Orleans.

Respectfully submitted,

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CERTIFICATE

I, the undersigned counsel, hereby certify that copies of the above and foregoing Statement as to Jurisdiction have been served upon all counsel of record, namely,

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by mailing same to them at their said addresses of record through the United States Postal Service, first class postage prepaid, and that all parties required to be served have been served.

New Orleans, Louisiana, this ____day of April, 1980.

Eugene G. Taggart

APPENDIX A

AMENDMENT XIV OF THE UNITED STATES CONSTITUTION

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

LOUISIANA CONSTITUTION OF 1974, ARTICLE 6

SECTION 26. (A) Parish Tax for General Purposes; Millage Limits; Increase. The governing authority of a parish may levy annually an ad valorem tax for general purposes not to exceed four mills on the dollar of assessed valuation. However, in Orleans Parish the limitation shall be seven mills, and in Jackson Parish the limitation shall be five mills. Millage rates may be increased in any parish when approved by a majority of the electors voting thereon in an election held for that purpose.

ORDINANCE
(AS AMENDED)
CITY OF NEW ORLEANS

CITY HALL, November 2, 1978
CALENDAR NO. 7604

NO. 7009 MAYOR COUNCIL SERIES
BY COUNCILMEN CIACCIO & SINGLETON (BY REQUEST)

AN ORDINANCE to levy an annual special real property service charge on all assessed real property listed on the tax rolls of the City of New Orleans for the year 1979 and for each year thereafter to provide for exemptions thereto.

SECTION I. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, that pursuant to the authority set forth in Section 30 of Article VI of the 1974 Constitution of Louisiana, together with the authority granted to the City of New Orleans by its Home Rule Charter, except as hereinafter provided each person, firm or corporation owning, using or having the right to use real property within the limits of the City of New Orleans (hereinafter referred to as "Owner") shall pay, and there is hereby levied, an annual special real property service charge of One Hundred ($100.00) Dollars on each parcel of real property separately assessed on the tax rolls of the City of New Orleans for the year 1979 and for each year thereafter to be dedicated for payment of compensation and ben-

efits for policemen, firemen and other municipal employees. Any property owner having two or more parcels located within a single subdivision as recognized by City Planning Commission will be assessed no more than $250.00 per year per subdivision. Any owner of such real property who is sixty-five (65) years of age and older shall be exempt from the payment of the special charge levied herein, but only insofar as concerns the separate parcel of real property upon which is located the owner's permanent residence, provided that such owner shall have made application therefor to the Director of Finance of the City of New Orleans and shall have furnished satisfactory evidence of his age and right of use of ownership.

The collection of the service charge shall begin on the first day of July of the year 1979, and for each year thereafter. Beginning with the year 1979, the entire amount of such service charge shall become delinquent on the first day of August and said service charge shall bear ten percent per annum delinquent penalty from the date of delinquency until paid. On the thirty-first day of July of each year, commencing with July 31, 1980, the Director of Finance of the City of New Orleans, under such regulations as may be prescribed by the City Council, shall forthwith proceed to advertise and sell for delinquent service charges the real property upon which the special real property service charge is delinquent. The proceedings by the Director of Finance for the enforcement of the payment of delinquent service charges levied herein shall be as follows:

A) Prior to the advertisement to sell for delinquent service charges, the Director of Finance shall address to the record owner of immovable property for which the service charge, or a part thereof, is delinquent, or to the actual owner in the event the record owner is deceased, written or printed notice by certified mail that the service charges on the immovable property must be paid within twenty (20) days after the mailing of the notice, or that the property will be sold according to law.

B) The Director of Finance shall thereafter publish a general notice in substantially the form as provided in R.S. 47:2181 addressed to all unknown owners of assessed immovable property in the Parish of Orleans, and to nonresident owners of such property whose post office address is unknown, in which he shall describe the property as described in the assessment rolls. Such notice shall be published once a week for two weeks in the official journal of the City of New Orleans.

C) Thereafter the Director of Finance shall advertise on the thirty-first of July of each year, commencing with July 31, 1980, after having at least twenty (20) days' notice as provided in Paragraph (B) hereof, shall proceed to advertise for sale the consolidated delinquent service charge list under one form, as provided for judicial sales of immovable property on which taxes are due, substantially as follows:

SALES OF IMMOVABLE PROPERTY

The City of New Orleans vs. Delinquent Service Charge Debtor.

By virtue of the authority vested in me by the Constitution and laws of the State of Louisiana, I will sell at the principal door of the Civil District Court of the Parish of Orleans with the legal hours for judicial sales beginning at 11 o'clock A.M. on the ____ day of _____, A.D., 19____, and continuing on each succeeding day, until said sales are completed, all immovable property on which service charges are due to the City of New Orleans, to enforce collection of taxes assessed in the year, 19____, together with interest thereon from the thirty-first day of July, 19____. at the rate of ten per centum (10%) per annum until paid and all costs. The names of said delinquent debtors of service charges, the amount of service charges due by each on the assessment of said year and the immovable property assessed to each to be offered for sale as follows: (Insert names of delinquent debtors in alphabetical order, the amount of service charges assessed in each year on each specific piece of property and the description of each specific piece of immovable property to be offered for sale.)

On the day of the sale I will sell such portions of the property as each debtor will point out and, in case the debtor will not point out sufficient property, will at once and without further delay sell the least quantity of said property of any debtor which any bidder will buy for the amount of taxes, interest and costs due by said

debtor; the sale will be without appraisement, for cash in legal tender money of the United States. The property sold will be redeemable at any time for the space of three years by paying the price given, including costs and five per centum (5%) penalty thereon, with interest at the rate of one per centum (1%) per month.

Advertisement shall be signed by the Director of Finance and shall be dated.

The Director of Finance shall not be required to advertise the names and property of all delinquent debtors of service charges at one advertisement but may proceed alphabetically and advertise the names and property on which the largest amount of taxes are due, taking some fixed amount as the basis and first advertising all above the amount at one and the same time, and shall so continue in like manner to advertise and sell from time to time as fast as possible until the collection of delinquent service charge is enforced. It shall be sufficient to advertise all property in the name of the person or persons, whether dead or alive, who at the time the assessment was made appeared to be the owners thereof upon the books of the conveyance office of the Parish of Orleans. No service charge sale shall be set aside or annulled for any error in description of measurement of the property assessed in the name of the owner provided the property sold can be reasonably identified.

The Director of Finance shall seize, advertise and sell the property upon which delinquent service charges are due, on or before the thirty-first day of December of the year following the year in which the service charges were assessed and due, or as soon thereafter as possible.

The Director of Finance shall execute and sign in person or by deputy, in the name of the City of New Orleans, a deed of sale to purchasers of any real estate sold for service charges, in which he shall relate in substance a brief history of the proceedings had, shall describe the property, state the amount of taxes, interest and costs and the bid made for the property, and the payment made to him in cash, and shall sell the property to the purchaser, with the right to be placed in actual possession thereof, by order of a court of competent jurisdiction, and shall conclude the deed with the statement that the property shall be redeemable at any time for the space of three years beginning on the day when the deed is filed for record in the conveyance office for the Parish of Orleans; if not redeemed, such record in the conveyance or mortgage office shall operate as a cancellation of all conventional and judicial mortgages; provided that whenever a sale shall be made at the instance and request of a subrogee, the recordation in the conveyance or mortgave office of the service charge deed executed by the Director of Finance to the purchaser shall operate as a cancellation of all liens and privileges, as well as of all conventional and judicial mortgages, recorded against the property sold,

except the liens and privileges for taxes and paving and other assessments due the state or the City of New Orleans, which shall be governed by existing laws.

The service charge sale shall convey, and the purchaser shall take, the whole of the property assessed to the delinquent debtor of service charges if it is the least quantity sufficient to satisfy the aggregate of all service charges, interest and penalties and costs. If the property is not divisible in kind and a part of the whole or undivided interest is sufficient to satisfy such aggregate charges, the Director of Finance shall require the bid or bids to be for such lesser portion of the whole property as will satisfy such charges and shall not entertain a bid in excess thereof. The service charge sale shall convey and the purchaser shall take the entirety of the property intended to be assessed and sold as it was owned by the delinquent debtor of service charges regardless of any error in the dimensions or description of the property as assessed and sold. The Director of Finance in the advertisement or deed of sale may give the full description according to original titles.

Upon the presentation of a certified copy of a service charge deed for immovables to any judge of competent jurisdiction, the judge shall in chambers grant an order of seizure and possession, commanding the sheriff to seize such property and place the purchaser in actual possession thereof; a writ of possession shall be issued thereon by the clerk, but the purchaser may take actual possession without such order, with the consent or

acquiescence of the service charge debtor or otherwise, provided no force or violence shall be used.

The bid to be accepted in service charge sales shall be at least equal to the service charges, costs and interest; otherwise, the Director of Finance shall bid in the property for the City of New Orleans and shall not readvertise the property or properties so adjudicated to the city for sale, unless the same has been redeemed, and shall as soon as possible thereafter notify the debtor in writing to the last known address and by one publication in the official journal of the City of New Orleans that within thirty (30) days he will take actual corporeal possession of the property so adjudicated.

The Director of Finance of the City of New Orleans be and he is hereby authorized to place the aforesaid special real property service charge upon the tax records and tax bills of the City of New Orleans, and to collect the same set forth herein. The Director of Finance shall expend such funds for the purposes herein set forth and only upon appropriation therefor by the Council of the City of New Orleans.

SECTION II. That if any portion of this Ordinance be held unconstitutional or invalid by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portion of the Ordinance, but such remaining portion shall be and remain in full force and effect.

SECTION III. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS, December 28, 1978.

/s/ SIDNEY BARTHELEMY
PRESIDENT OF COUNCIL

Delivered to the Mayor on December 28, 1978.

Approved: Jan. 2, 1979.

/s/ ERNEST N. MORIAL
MAYOR

Returned by the Mayor on Jan. 2, 1979 at 1:10 P.M.

/s/ LEATRICE S. SIEGEL
ASST. CLERK OF COUNCIL

ORDINANCE
(AS AMENDED)
CITY OF NEW ORLEANS

CITY HALL, January 18, 1979
CALENDAR NO. 7695
NO. 7110 MAYOR COUNCIL SERIES
BY: COUNCILMEN CIACCIO, EARLY, FRIEDLER, GIARRUSSO, SINGLETON

AN ORDINANCE to amend and reordain Ordinance No. 7009 M.C.S. being an ordinance entitled "AN ORDINANCE to levy an annual special real property service charge on all assessed real property listed on the tax rolls of the City of New Orleans for the year 1979 and for each year thereafter to provide for exemptions thereto, amending the title and body of said ordinance to provide relative to the annual special real property service charge levied therein; to provide that said special real property service charge shall be levied against the owner of certain property located in the City of New Orleans; to provide exemptions to the annual special real property service charge; to authorize the Director of Finance of the City of New Orleans to make, promulgate and enforce rules and regulations in connection with the implementation and enforcement of certain provisions of said ordinance; to repeal all conflicting ordinances; and to otherwise provide with respect thereto.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, that the title and body of Ordinance No. 7009 M.C.S., be and the same is hereby amended and reordained to read as follows:

ORDINANCE
(AS AMENDED)
CITY OF NEW ORLEANS

CITY HALL, November 2, 1978
CALENDAR NO. 7604
NO. 7009 MAYOR COUNCIL SERIES
BY: COUNCILMEN CIACCIO & SINGLETON (BY REQUEST)

AN ORDINANCE to levy an annual special real property service charge on the owner of certain real property separately listed and/or assessed on the tax rolls of the City of New Orleans for the year 1979 and for each year thereafter; to provide for exemptions thereto; and to provide otherwise with respect thereto.

SECTION I. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, that pursuant to the authority set forth in Section 30 of Article VI of the 1974 Constitution of Louisiana, together with the authority granted to the City of New Orleans by its Home Rule Charter, except as hereinafter provided each owner of real property within the limits of the City of New Orleans shall pay, and there is hereby levied upon the owner thereof, an annual special real property service charge of One Hundred ($100.00) Dollars for each parcel of real property owned by him and separately listed and/or assessed on the tax rolls of the City of New Orleans for the year 1979 and for each year thereafter.

If a person owns three or more parcels of unimproved real property in a subdivision the plan of which is granted final approval by the City Planning Commission subsequent to January 1, 1974, no such owner shall pay or have levied against him as a special real property service charge more than $300 per year, per subdivision, notwithstanding any provisions herein contained to the contrary. Provided however that the limitation on the levy of the real property service charge required by this paragraph shall expire as to a property owner either three years after the date of final approval by the City Planning Commission or three years from January 1, 1979, whichever is later.

Any owner of real property who is sixty-five (65) years of age or older shall be exempt from the payment of the special real property service charge levied upon the separate parcel of real property upon which is located his permanent residence, provided that application therefor shall be made to the Director of Finance of the City of New Orleans in accordance with rules and regulations promulgated by said Director, including evidence of age and ownership.

Notwithstanding any provision herein contained to the contrary, the owner of all real property separately listed and/or assessed on the tax rolls of the City of New Orleans for the year 1979 and thereafter shall be

exempt from the payment of the special real property service charge provided:

(A) The property is actually used for a religious or educational purpose and is owned by a church and/or an educational entity; and

(B) The property is used by him as his permanent residence and he has been awarded Social Security disability benefits or that he has been medically certified as totally disabled and has complied with the rules and regulations promulgated by the Director of Finance of the City of New Orleans including, but not limited to, proof of the disability and the ownership and occupancy of the property.

The Director of Finance is hereby authorized to promulgate such rules and regulations as may be necessary to effect implementation of the provisions of this ordinance and to provide all forms to be used in the administration thereof.

The collection of the special real property service charge shall begin on the first day of July of the year 1979 and on the first day of July in each year thereafter. Beginning with the year 1979, and in each year thereafter, the entire amount of such special real property service charge shall become delinquent on the first day of August and said special real property service charge shall bear ten percent per annum delinquent penalty from the date of delinquency until paid. On the

thirty-first day of July of each year, commencing with July 31, 1980, the Director of Finance of the City of New Orleans, under such regulations as may be prescribed by the City Council, shall forthwith proceed to advertise and sell for delinquent special real property service charges the real property upon which the special real property service charge is delinquent. The proceedings by the Director of Finance for the enforcement of the payment of delinquent special property service charges levied herein shall be as follows:

(A) Prior to the advertisement to sell for delinquent service charges, the Director of Finance shall address to the record owner of real property for which the special real property service charge, or a part thereof, is delinquent, or to the actual owner in the event the record owner is deceased, written or printed notice by certified mail that the special real property service charges on the real property must be paid within (20) days after the mailing of the notice, or that the property will be sold according to law.

(B) The Director of Finance shall thereafter publish a general notice in substantially the form as provided in R.S. 47:2181 addressed to all unknown owners of assessed real property in the Parish of Orleans, and to nonresident owners of such property whose post office address is unknown, in which he shall describe the property as described in the assessment rolls. Such notice shall be published once a week for two weeks in the official journal of the City of New Orleans.

(C) Thereafter the Director of Finance shall advertise on the thirty-first of July each year, commencing with July 31, 1980, after having at least twenty (20) days' notice as provided in Paragraph (B) hereof, shall proceed to advertise for sale the consolidated delinquent special real property service charge list under one form, as provided for judicial sales of real property on which taxes are due, substantially as follows:

SALES OF REAL PROPERTY

The City of New Orleans v. Delinquent Special Real Property Service Charge Debtor.

By virtue of the authority vested in me by the Constitution and laws of the State of Louisiana and by Ordinance No. _____ M.C.S. of the City of New Orleans, I will sell at the principal door of the Civil District Court of the Parish of Orleans with the legal hours for judicial sales beginning at 11 o'clock A.M. on the ____ day of _____ A.D., 19____, and continuing on each succeeding day, until said sales are completed, all real property on which special real property service charges are due to the City of New Orleans, to enforce collection of special real property service charges assessed in the year, 19____, together with interest thereon from the thirty-first day of July, 19____, at the rate of ten per centum (10%) per annum until paid and all costs. The names of said delinquent

debtors of special real property service charges, the amount of real property service charges due by each on the levy of said year and the real property assessed to each to be offered for sale as follows: (Insert names of delinquent debtors in alphabetical order, the amount of special real property service charges levied in each year on each specific piece of property and the description of each specific piece of immovable property to be offered for sale). On the day of the sale I will sell such portions of the property as each debtor will point out and, in case the debtor will not point out sufficient property, will at once and without further delay sell the least quantity of said property of any debtor which any bidder will buy for the amount of special real service charges, interest and costs due by said debtor; the sale will be without appraisement, for cash, in legal tender money of the United States. The property sold will be redeemable at any time for the space of three years by paying the price given, including costs and five per centum (5%) penalty thereon, with interest at the rate of one per centum (1%) per month.

Advertisement shall be signed by the Director of Finance and shall be dated.

The Director of Finance shall not be required to advertise the names and property of all delinquent

debtors of special real property service charges at one advertisement but may proceed alphabetically and advertise the names and property on which the largest amount of special real property service charges are due, taking some fixed amount as the basis and first advertising all above the amount at one and the same time, and shall so continue in like manner to advertise and sell from time to time as fast as possible until the collection of delinquent special real property service charges is enforced. It shall be sufficient to advertise all property in the name of the person or persons, whether dead or alive, who at the time the assessment was made appeared to be the owners thereof upon the books of the conveyance office of the Parish of Orleans. No special real property service charge sale shall be set aside or annulled for any error in description of measurement of the property listed and/or assessed in the name of the owner provided the property sold can be reasonably identified.

The Director of Finance shall execute and sign in person or by deputy, in the name of the City of New Orleans, a deed of sale to purchasers of any real property sold for special real property service charges, in which he shall relate in substance a brief history of the proceedings had, shall describe the property, state the amount of special real property service charges, interest and costs and the bid made for the property, and the payment made to him in cash, and shall sell the property to the purchaser, with the right to be placed in actual possession thereof, by order of a court of compe-

tent jurisdiction, and shall conclude the deed with the statement that the property shall be redeemable at any time for the space of three years beginning on the day when the deed is filed for record in the conveyance office for the Parish of Orleans; if not redeemed, such record in the conveyance or mortgage office shall operate as a cancellation of all conventional and judicial mortgages; provided that whenever a sale shall be made at the instance and request of a subrogee, the recordation in the conveyance or mortgage office of the special real property service charge deed executed by the Director of Finance to the purchaser shall operate as a cancellation of all liens and privileges, as well as of all conventional and judicial mortgages recorded against the property sold, except the liens and privileges for taxes and paving and other assessments due the state or the City of New Orleans, which shall be governed by existing laws.

The special real property service charge sale shall convey, and the purchaser shall take, the whole of the property listed and/or assessed to the delinquent debtor of special real property service charges if it is the least quantity sufficient to satisfy the aggregate of all special real property service charges, interest and penalties and costs. If the property is not divisible in kind and a part of the whole or undivided interest is insufficient to satisfy such aggregate special real property service charges, the Director of Finance shall require the bid or bids to be for such lesser portion of the

whole property as will satisfy such special real property service charges and shall not entertain a bid in excess thereof. The special real property service charge sale shall convey and the purchaser shall take the entirety of the property intended to be described and sold as it was owned by the delinquent debtor of special real property service charges regardless of any error in the dimensions or description of the property as described and sold. The Director of Finance in the advertisement or deed of sale may give the full description according to original titles.

Upon the presentation of a certified copy of a special real property service charge deed for real property to any judge of competent jurisdiction, the judge shall in chambers grant an order of seizure and possession, commanding the sheriff to seize such property and place the purchaser in actual possession therefor; a writ of possession shall be issued thereon by the clerk, but the purchaser may take actual possession without such order, with the consent or acquiescence of the special real property service charge debtor or otherwise, provided no force or violence shall be used.

The bid to be accepted in special real property service charge sales shall be at least equal to the special real property service charges, costs and interest; otherwise, the Director of Finance shall bid in the property for the City of New Orleans and shall not readvertise the property or properties so adjudicated to the City for sale, unless the same has been redeemed, and shall as soon as possible thereafter notify the debtor in writing

to the last known address and by one publication in the official journal of the City of New Orleans that within thirty (30) days he will take actual corporeal possession of the property so adjudicated.

The Director of Finance of the City of New Orleans be and he is hereby authorized to place the aforesaid special real property service charge upon the tax records and tax bills of the City of New Orleans, and to collect the same set forth herein. The Director of Finance shall expend such funds for the purposes herein set forth and only upon appropriation therefor by the Council of the City of New Orleans.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS December 28, 1978.

SIDNEY J. BARTHELEMY
PRESIDENT OF COUNCIL

Delivered to the Mayor on December 28, 1978.

Approved: January 2, 1979.

ERNEST N. MORIAL
MAYOR

Returned by the Mayor on January 2, 1979 at 1:10 P.M.

LEATRICE S. SIEGEL
ASST. CLERK OF COUNCIL

SECTION 2. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS, April 5, 1979.

JOSEPH I. GIARRUSSO
PRESIDENT OF COUNCIL

Delivered to the Mayor on April 5, 1979.

Approved: April 10, 1979.

ERNEST N. MORIAL
MAYOR

Returned by the Mayor on April 10, 1979 at 3:45 P.M.

JOSEPH C. PETERSON
CLERK OF COUNCIL

ORDINANCE
CITY OF NEW ORLEANS

CITY HALL: August 2, 1979
CALENDAR NO.: 7956
NO. 7280 MAYOR COUNCIL SERIES
BY: COUNCILMEN EARLY AND CIACCIO

AN ORDINANCE to amend Ordinance No. 7009 M.C.S., as amended by Ordinance No. 7110 M.C.S., being an ordinance entitled "An Ordinance to levy an annual special real property service charge on the owner of certain real property separately listed and/or assessed on the tax rolls of the City of New Orleans for the year 1979 and for each year thereafter; to provide for exemptions thereto"; by adding thereto a new subparagraph to be designated (C) to the fourth unnumbered paragraph of Section 1, to provide for an exemption from the special real property service charge for owners of certain unimproved property to repeal all conflicting ordinances; and to provide otherwise with respect thereto.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, That a new subparagraph to be designated (C) to follow subparagraph (B) of the fourth unnumbered paragraph of Section 1 of Ordinance No. 7009 M.C.S., as amended by Ordinance No. 7110 M.C.S., be and the same is hereby ordained to read as follows:

"Notwithstanding any provision herein contained to the contrary, the owner of all real property separately listed and/or assessed on the tax rolls of the City of New Orleans for the year 1979 and thereafter shall be exempt from the payment of the special real property service charge provided:

* * *

(C) The property meets all of the following provisos:

(1) Said lot was created as a lot of record prior to 1950;

(2) Said lot of record cannot be further subdivided into smaller tracts of property in accordance with the existing zoning and subdivision regulations, (i.e., six thousand (6,-000) square feet or less);

(3) Said lot is vacant and contains no structures or other improvements thereon, nor is said lot being used for gardening, farming, pasturing of livestock, or for any income producing purpose;

(4) Said lot is inaccessible by any public highway or street opened and improved in any way, such as by asphalt, concrete, or shells, by the Department of Streets; and

(5) Said lot is not served by an adjacent Sewerage and Water Board water or sewer line, nor is it connected to any Sewerage and Water Board water or sewer line.

The owner of any property seeking an exemption under this subparagraph from the Special Real Property Service Charge, shall make annual application for such exemption with, and in the manner prescribed by, the Director of Finance on forms provided by the Department of Finance. The Director of Finance shall in turn review the application, and render a determination as to whether or not said property complies with the foregoing provision, and, if so, grant an exemption thereto.

* * *"

SECTION 2. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS September 6, 1979.

JOSEPH I. GIARRUSSO
COUNCIL PRESIDENT

DELIVERED TO MAYOR ON September 6, 1979.

APPROVED September 10, 1979.

ERNEST N. MORIAL
MAYOR

RETURNED BY THE MAYOR ON September 10, 1979 at 1:45 P.M.

JOSEPH C. PETERSON
CLERK OF COUNCIL

THE FOREGOING IS CERTIFIED TO BE A TRUE AND CORRECT COPY.

/s/ JOSEPH C. PETERSON
JOSEPH C. PETERSON, COUNCIL CLERK
CITY OF NEW ORLEANS

ORDINANCE
CITY OF NEW ORLEANS

CITY HALL: August 16, 1979
CALENDAR NO. 7970
NO. 7286 MAYOR COUNCIL SERIES
BY: COUNCILMAN BAGERT (BY REQUEST)

AN ORDINANCE to amend Ordinance No. 7009 M.C.S., as amended by Ordinance No. 7110 M.C.S., being an ordinance entitled "An Ordinance to levy an annual special real property service charge on the owner of certain real property separately listed and/or assessed on the tax rolls of the City of New Orleans for the year 1979 and for each year thereafter; to provide for exemptions thereto"; by adding thereto a new subparagraph to be designated (D) to the fourth unnumbered paragraph of Section 1, to provide for an exemption from the special real property service charge for owners of certain property; to repeal all conflicting ordinances; and to provide otherwise with respect thereto.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS That a new subparagraph to be designated (D) to follow sub-paragraph (C) of the fourth unnumbered paragraph of Section 1 of Ordinance No. 7009 M.C.S., as amended by Ordinance No. 7110 M.C.S., be and the same is hereby ordained to read as follows:

"Notwithstanding any provision herein contained to the contrary, the owner of all real property separately listed and/or assessed on the tax rolls of the City of New Orleans for the year 1979 and thereafter shall be exempt from the payment of the special real property service charge provided:

* * *

(D) The property is a single lot of record measuring 5000 square feet or less and is adjacent to and contiguous with another lot of record owned by the same person which contains thereon a house or building provided that the lot:

(1) Is vacant and is being used in conjunction with the house or building on the contiguous lot; or

(2) Is an accessory use, which is defined as a subordinate use which is incidental to and customary or necessary in connection with the main building or house located on the contiguous lot; or

(3) Contains only an accessory building which is defined as a subordinate building, attached to or detached from the main building, the use of which is incidental to that of the main building and not used as a place of habitation except by

domestic servants employed upon the premises; or

(4) Contains a portion of the house or building on the contiguous lot.

The Director of Finance is authorized to establish rules and regulations necessary to effectuate the exemption provided for by this sub-paragraph.

* * *

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS, September 6, 1979.

JOSEPH I. GIARRUSSO
COUNCIL PRESIDENT

DELIVERED TO THE MAYOR ON September 6, 1979.

APPROVED: September 10, 1979.

ERNET N. MORIAL
MAYOR

RETURNED BY THE MAYOR ON September 10, 1979 at 1:45 P.M.

JOSEPH C. PETERSON,
CLERK OF COUNCIL

APPENDIX B

CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

NO. 79-2043 DIVISION "E" DOCKET NO. 5

ACORN, FOR ITSELF, AND ITS MEMBERS,
PAUL COX, STEVE HOLT, BEULAH LEBOSTRIE,
AND BRENDA QUANT

VERSUS

CITY OF NEW ORLEANS

consolidated with

NO. 79-12298 DIVISION "G"

MRS. ROSEMARY BAYOLO, WIFE OF/AND
JOSEPH S. GEECK, JR.

VERSUS

ERROLL WILLIAMS, DIRECTOR OF FINANCE
CITY OF NEW ORLEANS

consolidated with

NO. 79-12460 DIVISION "J"

MRS. JANET, WIFE OF/AND
EDWIN H. HEATON, ET AL

VERSUS

ERROLL WILLIAMS, DIRECTOR OF FINANCE
CITY OF NEW ORLEANS

consolidated with

NO. 79-12699 DIVISION "E"

DARYL CLAIRE SINS, WIFE OF/AND
ALVIN R. CHILDRESS, III

VERSUS

CITY OF NEW ORLEANS, ET AL

consolidated with

NO. 79-14229 DIVISION "J"

JACKSON HOMESTEAD ASSOCIATION, ET AL

VERSUS

ERROLL WILLIAMS, DIRECTOR OF FINANCE
CITY OF NEW ORLEANS

FILED: _____ _____
DEPUTY CLERK

STIPULATION OF FACTS

The undersigned attorneys, on behalf of parties Plaintiffs and Intervenors and parties Defendants, to-wit:

ARTHUR BALLIN, on behalf of Mrs. Janet, wife of/and Edwin R. Heaton, et al., Plaintiffs in Proceedings No. 79-12460 and also on behalf of Krauss Co., Ltd., et als, Intervenors in said proceedings;

EUGENE TAGGART, on behalf of Mrs. Rosemary Bayolo, wife of/and Joseph S. Geeck, Jr., et als., Plaintiffs in Proceedings No. 79-12298;

GREGORY C. THOMAS, on behalf of Plaintiffs Jackson Homestead Association, et als., Plaintiffs in Proceedings No. 79-14229; and

SALVADOR ANZELMO, Acting City Attorney, on behalf of all Defendants in Proceedings No. 79-12298, 79-12460 and 79-12699,

stipulate that if pertinent evidence has been adduced at the trial of these consolidated cases, such as testimony of witnesses, documents, etc., the following facts would have been established, and they agree that the following facts are uncontroverted and shall be considered as properly established in the herein proceedings:

I.

The attached certified copies of Ordinances No. 7009 M.C.S., as amended and re-ordained by Ordinances No. 7110 M.C.S., No. 7280 M.C.S. and No. 7286

M.C.S., are ordinances adopted by the Council of the City of New Orleans, and signed by the Mayor of New Orleans, and are in effect as of November 1, 1979.

II.

All individually named plaintiffs in the above proceedings are owners of real property located in the City of New Orleans.

III.

The proceeds of the "special real property service charge", are deposited in the "General Fund of the City of New Orleans" pursuant to Section 6-201(2)(a) of the Charter of the City of New Orleans.

IV.

The City of New Orleans addressed and mailed to each owner of real property within the limits of the City of New Orleans and/or to lending institutions where escrow accounts have been set up, bills in the sum of $100.00 for each parcel of real property owned by him and separately listed and/or assessed on the tax rolls of the City of New Orleans for the year 1979.

V.

Prior to enactment of the said ordinance, publication in the official journal of the City of New Orleans was made of the introduction of the original ordinance

and all subsequent amending ordinances. The adoption of the ordinances and the promulgation thereof were also published. The specimen bill attached hereto is representative of the bills issued by the City of New Orleans for the "special real property service charge".

VI.

Individually named plaintiffs in the consolidated class actions herein paid the $100.00 charge under protest, and the City of New Orleans accepted payment from them and other owners of real property subject to "payment under protest".

VII.

Non-resident owners as well as resident owners of real property in Orleans Parish are billed and required to pay the $100.00 "special real property service charge".

VIII.

Parcels of real property separately listed and/or assessed on the tax rolls of the City of New Orleans for the year 1979 have different assessed values.

IX.

The designation as a "special real property service charge" in Ordinance No. 7009 M.C.S., as amended, notwithstanding, no specific service is provided for the owners of real property in the City of New Orleans,

and its adoption was to provide revenues for the operation and maintenance of the City of New Orleans.

THUS DONE AND SIGNED on this 9th day of November, 1979 at New Orleans, Louisiana in the presence of the undersigned witnesses.

WITNESSES:

_____

_____

Attorneys for Plaintiffs and the
Class They Represent

/s/ ARTHUR L. BALLIN
ARTHUR L. BALLIN

/s/ EUGENE G. TAGGART
EUGENE G. TAGGART

/s/ GREGORY C. THOMAS
GREGORY C. THOMAS

Attorney for Defendants

/s/ SALVADOR ANZELMO
SALVADOR ANZELMO

APPENDIX C

STATE OF LOUISIANA
CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS

No. 79-12298 DIVISION E DOCKET No. 5
79-14229
79-12460

NOTICE OF SIGNING OF JUDGMENT

New Orleans, La.
November 14, 1979

GEECK

versus

WILLIAMS, ET AL

JACKSON HOMESTEAD

versus

WILLIAMS, ET AL

HEATON

versus

WILLIAMS, ET AL

TO: Eugene Taggart
Norris S. L. Williams
Salvador Anzelmo
Arthur L. Ballin
Alvin R. Childress
John F. Robbert
Steve Bachmann

In accordance with Article 1913 C.C.P., you are hereby notified that Judgment in the above entitled and numbered cause was signed on November 14, 1979.

Yours very truly,

/s/ E. Crolin
Deputy Clerk, District Court

Minute Clerk Division E

CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

NO. 79-12298 DIVISION "G" DOCKET NO. 4

MRS. ROSEMARY BAYOLO, WIFE OF/AND
JOSEPH S. GEECK, JR.

VS.

ERROL WILLIAMS, DIRECTOR OF FINANCE
OF THE CITY OF NEW ORLEANS, ET AL

JUDGMENT

This case came before the Court for trial on the merits on November 12, 1979, consolidated for trial with the other cases challenging the City's Ordinances relating to the special real property service charge and cases challenging the Ordinance relating to the road use service charge, namely,

Acorn, et al vs. City of New Orleans, et al, Suite No. 79-2043;

Mrs. Janet, wife of/and Edwin H. Heaton, et al vs. Erroll Williams, Director of Finance, City of New Orleans, et al, Suit No. 79-12460;

Daryl Claire Sins, wife of/and Alvin R. Childress, III vs. City of New Orleans, et al, Suit No. 79-12699;

Jackson Homestead Association, et al vs. Erroll Williams, Director of Finance, City of New Orleans, et al, Suit No. 79-14229;

Louis W. Schlekau vs. Erroll Williams, Director of Finance of the City of New Orleans, et al, Suit No. 79-14711;

M. J. Falgoust, Inc. vs. Erroll Williams, Director of Finance of the City of New Orleans, et al, Suit No. 79-15316;

and

Jimmie Walker, et al vs. The City of New Orleans, et al, Suit No. 79-16165;

and present for this case were,

Eugene G. Taggart of the law firm of Monroe & Lemann,
Attorney for the plaintiffs, Mr. and Mrs. Joseph S. Geeck, Jr., Frederick R. Becker, Jr., F. A. Courtenay, Jr., Mr. and Mrs. George F.

Indest III, Mrs. Eleanor F. M. Cabibi, Mr. and Mrs. Joseph Samuel Geeck III, Alvin E. Koenig, Heirs of Henry Flack and Miriam Cohen, Nell Waring, and Juanita T. Herndon, and all members of the classes they represent challenging the Ordinances relating to the special real property service charge of the City of New Orleans described in these proceedings and the two other class actions in Suit Nos. 79-12460 and 79-14229, and certified by Judgment of Court dated October 19, 1979;

and

Salvador Anzelmo, Acting City Attorney, Galen S. Brown, Deputy City Attorney, and Joseph N. Naccari, Jackson P. McNeely, Marc G. Shachat and Debra J. Fischman, Assistant City Attorneys,
Attorneys for the Defendants, Erroll Williams, Director of Finance of the City of New Orleans, et al;

and

John F. Robbert,
Attorney for the Intervenors, New Orleans Coalition, Inc., and Mr. and Mrs. Thomas Niehaus;

and upon considering the pleadings, the evidence, written and oral arguments of counsel, and for the reasons orally assigned by the Court, it is

ORDERED, ADJUDGED AND DECREED that there be judgment in favor of the plaintiffs, Mrs. Rosemary Bayolo, wife of/and Joseph S. Geeck, Jr., Frederick R. Becker, Jr., F. A. Courtenay, Jr., Mr. and Mrs. George F. Indest III, Mrs. Eleanor F. M. Cabibi, Mr. and Mrs. Joseph Samuel Geeck III, Alvin E. Koenig, Heirs of Henry Flack and Miriam Cohen, Nell Waring, and Juanita T. Herndon, and all members of the classes they represent, and against the defendants, Erroll Williams, Director of Finance of the City of New Orleans, Ernest N. Morial, Mayor of the City of New Orleans, Sidney J. Barthelemy and Joseph I. Giarrusso, Councilmen at Large of the City of New Orleans, and Frank A. Friedler, Jr., James M. Singleton, Mike Early, Brod Bagert and Phillip C. Ciaccio, Councilmen of the City of New Orleans, all in their official capacity, and the City of New Orleans, and intervenors, New Orleans Coalition, Inc., and Mr. and Mrs. Thomas Niehaus, and it is further

ORDERED, ADJUDGED AND DECREED that Ordinance No. 7009 M.C.S., as amended and reordained by Ordinance No. 7110 M.C.S., No. 7280 M.C.S., and No. 7286 M.C.S., be and are hereby declared unconstitutional, unlawful, and null and void *ab initio* and of no effect, and it is further

ORDERED, ADJUDGED AND DECREED that plaintiffs and each and all members of the classes represented by them are entitled to a refund of all payments of the $100 "special real property service

charge" heretofore made or hereafter to be made by them pursuant to the Ordinances herein declared unconstitutional, unlawful and null and void *ab initio* and of no effect, regardless of whether such payments were made under protest or without protest, after deducting from the refunds due and payable to each plaintiff and each individual member of the classes they represent such percentage of the said refunds as will be determined by this Court to be due to attorneys for plaintiffs and the classes they represent, for expenses and for attorneys' fees, and it is further

ORDERED, ADJUDGED AND DECREED that the attorneys in the consolidated class action suits, to-wit: No. 79-12298, "Mrs. Rosemary Bayolo, wife of/and Joseph S. Geeck, Jr. versus Erroll Williams, et al", Eugene G. Taggart of the law firm Monroe & Lemann, 1424 Whitney Building, New Orleans, Louisiana; No. 79-12460, entitled "Mrs. Janet, wife of/and Edwin H. Heaton, et al versus Erroll Williams, et al", Arthur L. Ballin, Suite 1121, Carondelet Building, 226 Carondelet Street, New Orleans, Louisiana; and No. 79-14229, entitled "Jackson Homestead Association, et al versus Erroll Williams, et al", Norris S. L. Williams and Gregory C. Thomas of the law firm Chaffe, McCall, Phillips, Toler and Sarpy, 1500 First NBC Building, New Orleans, Louisiana; representing identical classes, are jointly entitled to reimbursement of their cash expenses and to attorneys' fees in amounts to be determined by this Court upon finality of the Judgments in said class action suits, and it is further

ORDERED, ADJUDGED AND DECREED that all defendants are ordered and instructed to make the refunds as hereinabove provided and that Erroll Williams, in his capacity as Director of Finance of the City of New Orleans, is ordered and instructed to make the refunds in the amounts and in the manner herein provided for; and, accordingly, to pay over to the attorneys for plaintiffs and the classes represented by them the percentage of such refunds to be established by this Court and to pay the remaining balance to all plaintiffs, intervenors and all members of the classes represented by them pro-rata in accordance with the amounts paid by them, and it is further

ORDERED, ADJUDGED AND DECREED that those members of the classes represented by the plaintiffs who have not paid the $100 special real property service charge be and are hereby relieved of the obligation of paying the said charge pursuant to the said Ordinances herein declared unconstitutional, unlawful, and null and void *ab initio* and of no effect, and it is further

ORDERED, ADJUDGED AND DECREED that the demand of intervenors, New Orleans Coalition, Inc., and Mr. and Mrs. Thomas Niehaus, be and is hereby dismissed at intervenors' cost.

Judgment read, rendered and signed in open Court on this 14th day of November, 1979, at New Orleans, Louisiana.

/s/ GERALD P. FEDEROFF
DISTRICT JUDGE

APPENDIX "D"

ACORN for Itself and its Members,
Paul Cox, Steve Holt, Beulah Labostrie
and Brenda Quant

versus

CITY OF NEW ORLEANS, Ernest Morial,
Sidney Barthelemy, Joseph Giarrusso, Frank Friedler,
Jim Singleton, Mike Early, Brod Bagert, Philip Ciaccio,
Erroll Williams and Patrick Koloski.

Mrs. Rosemary BAYOLO, Wife of/and
Joseph S. Geeck, Jr.

versus

Erroll WILLIAMS, Director of Finance
of the City of New Orleans et al.

Mrs. Janet, Wife of/and Edwin H. HEATON et al.

versus

Erroll WILLIAMS, Director of Finance
of the City of New Orleans et al.

JACKSON HOMESTEAD ASSOCIATION,
Individually and on Behalf of Others Similarly
Situated, and on Behalf of Certain of its
Borrowers and South Pines, Inc., Individually
and on Behalf of Others Similarly Situated

versus

Erroll WILLIAMS, Director of Finance
of the City of New Orleans et al.

Nos. 66188 to 66191.

Supreme Court of Louisiana.

Nov. 28, 1979

Dissenting Opinions Nov. 29, 30 and Dec. 3, 1979.

Reasons for Judgment Dec. 5, 1979.

Rehearings Denied Jan. 11, 1980.

DIXON, JUSTICE.

In these consolidated cases the plaintiffs and some intervenors attack the constitutionality of Ordinance No. 7009, as amended by Ordinances Numbers 7110, 7280 and 7286 of the City of New Orleans. The district court found the ordinances unconstitutional, and the City appealed.

The ordinance levied a tax as follows:

". . . except as hereinafter provided each owner of real property within the limits of the City

of New Orleans shall pay, and there is hereby levied upon the owner thereof, an annual special real property service charge of One Hundred ($100.00) Dollars for each parcel of real property owned by him and separately listed and/or assessed on the tax rolls of the City of New Orleans for the year 1979 and for each year thereafter."

The trial judge held the ordinances unconstitutional and gave the following reasons from the bench:

". . . I find that the total lack of relationship between the unit sought to be taxed and the tax imposed strikes the charge with Constitutional invalidity.

. . . a parcel of ground as described in the ordinance and as implemented or as created by the assessors is so utterly unequal in its application as to force the conclusion that the imposition of the tax violates the equal protection requirements of the State and Federal Constitutions, and I find the tax unequal and therefore invalid."

The parties stipulated that the proceeds of the "service charge" are deposited in the General Fund of the City of New Orleans.

The attack on the validity of the tax included several arguments, in addition to the argument that the tax is

invidiously discriminatory in violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution.

We find that the trial judge erred in holding that the ordinances violated the Fourteenth Amendment of the United States Constitution. The other arguments advanced by plaintiffs and some intervenors in attacking the legality of the ordinances do not convince us that the ordinances are invalid.

Because of the exigent circumstances involving the budgetary and fiscal matters of the City, we make this decision and decree, the written reasons for which will follow in due course.

DECREE

IT IS ORDERED, ADJUDGED AND DECREED that the judgment of the Civil District Court of the Parish of Orleans declaring Ordinance No. 7009 M.C.S., as amended and reordained by Ordinance No. 7110 M.C.S., No. 7280 M.C.S. and No. 7286 M.C.S., unconstitutional is reversed, and there is now judgment in favor of the City of New Orleans and intervenors, The New Orleans Coalition, Inc., Julia Loftus and Thomas Niehaus, and against plaintiffs and intervenors, Daryl Claire Sins and Alvin R. Childress, rejecting the demands of plaintiffs and intervenors in these consolidated cases, all at the costs of plaintiffs and intervenors Sins and Childress.

SUMMERS, C. J., and BLANCHE, J., dissent for the reasons assigned.

LANDRY, J. Ad Hoc, concurs in part and dissents in part for reasons assigned.

REASONS FOR JUDGMENT

DIXON, Justice.

In the course of this litigation, some issues raised in the attack on Ordinance No. 7009 M.C.S., as amended, have passed out of the case. Before us, the City admits that the tax is not a "service charge," despite that designation in the ordinance itself.

In brief and argument plaintiffs urge: (1) the City does not have the lawful authority to levy this tax; (2) the tax is illegal because it is not levied in proportion to the property taxed, because it circumvents the *ad valorem* scheme of property taxation of the 1974 Constitution, and because it violates the homestead exemption provisions of the Constitution; (3) the tax is violative of the United States Constitution and Article 1, §3 of the Louisiana Constitution.

The City's Taxing Power

New Orleans is governed by a Home Rule Charter.

Article 6, §4 of the Louisiana Constitution of 1974 continued in effect existing home rule charters as follows:

> "Every home rule charter or plan of government existing or adopted when this constitution is adopted shall remain in effect and may be amended, modified, or repealed as provided therein. . ."

Article 14, §22 of the 1921 Constitution declared the City of New Orleans "to have a home rule charter consisting of Act 159 of 1912 as amended through Regular Legislative Session of 1950, which said home rule charter may be amended or replaced only as hereinafter provided."

Act 338 of 1936 amended Act 159 of 1912, the City Charter of New Orleans, in relevant part in §1(f):

> "The City of New Orleans shall have the right to levy, impose and collect any and all kinds and classes of taxes or license fees that may be imposed that are necessary for the proper operation and maintenance of the municipality, provided same is not expressly prohibited by the Constitution of the State of Louisiana . . ."

It is clear therefore that the Constitution and the legislature, acting under that Constitution, have granted to the City of New Orleans full and complete power to impose all kinds and classes of taxes, provided only that they are "not expressly prohibited by the Constitution of the State of Louisiana."

No one has suggested that the tax involved in this case is expressly prohibited by the Constitution of this state.

Plaintiffs have argued that our case of *Southern Pacific Transportation Co. v. Parish of Jefferson,* 315 So.2d 619 (La. 1975), limits, in some way, the power of the City to levy the tax.

That case is not applicable; it involved a different home rule charter, that of the Parish of Jefferson, which did not grant to the Parish of Jefferson the almost unlimited power to tax found in the New Orleans Home Rule Charter.

As this court stated in *Mouledoux v. Maestri,* 197 La. 525, 535, 2 So.2d 11, 14 (1941):

> "We have no right to review the policy or wisdom of legislation because our jurisdiction is confined to determining the applicability, legality or constitutionality of laws. . . ."

This court in the *Mouledoux* case recognized the plenary grant of taxing power to the City of New Orleans by the legislature, and approved one of the earliest city sales taxes in the United States, in spite of the fact that the state legislature in 1940 repealed the state sales tax enacted in 1938.

Conflict with Ad Valorem Provisions of Constitution

Plaintiffs contend the tax is illegal because it is not levied in proportion to the value of the property taxed; that it circumvents Article 6, §26 of the Constitution by increasing the amount of taxes on the assessed valuation of real property; and that it violates the homestead exemption provisions of the Louisiana Constitution.

In the second Constitution of the State of Louisiana (Article 127 of the Constitution of 1845) is found this provision: "After the year 1848, all property on which taxes may be levied in this State shall be taxed in proportion to its value, to be ascertained as directed by law." The requirement that property "shall be taxed in proportion to its value" was repeated in five subsequent constitutions.[1]

Since 1921, however, there has been no constitutional requirement that property be taxed in proportion to its value.

Instead of the provision common in the Louisiana Constitutions since 1845, that taxation shall be "equal and uniform throughout the State" and that property

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1 Article 123 of the Constitution of 1852.
Article 124 of the Constitution of 1864.
Article 203 of the Constitution of 1879.
Article 225 of the Constitution of 1898.
Article 225 of the Constitution of 1913.

"shall be taxed in proportion to its value," the Louisiana Constitution of 1921, in Article 10, §1, provided that ". . . all taxes shall be uniform upon the same class of subjects throughout the territorial limits of the authority levying the tax . . ." Instead of a property tax scheme purporting to be "equal and uniform," and at the same time "in proportion to its value," the Constitutional Convention of 1921 settled upon taxes which "shall be uniform upon the same class of subjects throughout the territorial limits of the authority levying the tax." Article 10, §1, Louisiana Constitution of 1921.

"Equal and uniform" taxation had been subject to conflicting decisions and interpretations in the early 19th century; some of the interpretations could be reconciled with taxation "in proportion to its value" only with difficulty. 38 Ky.L.J. 31, 39 (1949-50). As the 20th century arrived, the classification of property (because of differing economic value and productivity) and its assessment or taxation at different rates became more and more attractive to taxing bodies in need of new sources of revenue.

The change in the constitutional rule of property taxation in Louisiana in 1921 apparently failed to excite observers. It was noted neither in the summary of the constitutional convention in Volume 15 of the American Political Science Review, page 565, nor in the Louisiana State Law Institute's Project of a Constitution, Volume 1, History, "The Constitution of 1921," pages 467, 486, by Alden L. Powell.

The provisions of Article 10, §1 of the 1921 Constitution are "continued as statutes," and have now been repealed. Act 170 of 1975, §1; Act 613 of 1978, §1.

For over half a century there has been neither statutory nor constitutional requirement in Louisiana that taxes on property be levied in proportion to its value.

In the Constitution of 1974 property taxation is treated in Part II of Article 7. Section 18 concerns *ad valorem* taxes. Section 18 provides that property subject to *ad valorem* taxation shall be listed on the assessment rolls and that the assessment (percentage of fair market value) "shall be uniform throughout the state upon the same class of property." In Louisiana today, the same class of property must be assessed uniformly throughout the state for the purpose of taxation according to value. Other kinds of taxation are not constitutionally bound to a value basis.

One reason plaintiffs contend that this city tax on New Orleans property denies them the equal protection of laws under the federal and state constitutions, apparently, is that it would add an additional $100 tax on property only subject to a statewide *ad valorem* tax.

There is no substance to this argument. Louisiana, although empowered, no longer has a statewide *ad valorem* tax on real property. Act 3 of 1972; Article X-A of the Louisiana Constitution of 1921.

The tax involved here is not an *ad valorem* tax. *Ad valorem* means "according to value. Duties are either *ad valorem* or *specific;* the former when the duty is laid in the form of a percentage on the value of the property; the latter where it is imposed as a fixed sum on each article of a class without regard to its value. The term *ad valorem* tax is as well defined and fixed as any other used in political economy or legislation, and simply means a tax or duty upon the value of the article or thing subject to taxation." Black's Law Dictionary, 3d ed.

The tax under consideration here is clearly not levied according to the valuation of the property taxed; it is a specific tax, and not at *ad valorem* tax. It is not, therefore, a millage increase upon a parish *ad valorem* tax, and is not regulated by other provisions of law governing *ad valorem* taxation.

Plaintiffs argue that the additional tax on a parcel of land in New Orleans circumvents the provisions of Article 6, §26 of the Constitution of 1974 by increasing the amount of taxes on property subject to *ad valorem* taxes. However, if the tax is not "expressly prohibited," it is not outside the taxing power of the City of New Orleans. See *Mouledoux v. Maestri,* supra. Likewise, there is no violation of the homestead exemption provisions of the Louisiana Constitution. Homestead exemption in Article 7, §20 exempts certain property "from state, parish and special *ad valorem* taxes to the extent of three thousand dollars of the assessed valuation." The homestead exemption applies to nothing except *ad valorem* taxes.

Equal Protection

A discussion of plaintiffs' equal protection attack upon the ordinance must begin by determining exactly what constitutes, to plaintiffs' view, a denial of the equal protection of the laws guaranteed by the Fourteenth Amendment of the United States Constitution and by Article 1, §3 of the Louisiana Constitution. The salient characteristic of the ordinance, from an equal protection point of view, is that it establishes a burden, i.e. an owner's annual tax liability of $100, and allocates this burden only to each parcel of real property separately listed or assessed on the city's tax rolls. By so doing, the ordinance constructs a classification: from an undifferentiated mass of entities, it selects a group possessing certain specified traits and subjects those entities which are members of the group to treatment not afforded to other entities.

With regard to the process of classification itself we note, first, that it is by means of this activity, performed by all human languages and all human cultures, that social life achieves meaning, structure and regularity. That law-making bodies must exercise this function on behalf of society was recognized by the United States Supreme Court in *Barbier v. Connolly,* 113 U.S. 27, 31, 5 S.Ct. 357, 359-360, 28 L.Ed. 923, 925 (1885):

> "'. . . neither the [Fourteenth] amendment — broad and comprehensive as it is — nor any other amendment, was designed to interfere

with the power of the State, sometimes termed its police power, to prescribe regulations to promote health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to it wealth and prosperity. From the very necessities of society, legislation of a special character, having these objects in view, must often be had in certain districts, such as for draining marshes and irrigating arid plains. Special burdens are often necessary for general benefits. . . Regulations for these purposes may press with more or less weight upon one than upon another, but they are designed, not to impose unequal or unnecessary restrictions upon any one, but to promote, with as little individual inconvenience as possible, the general good.' "

Subsequent developments in the analysis of legislative classifications in terms of the constitutional guarantee of equal protection have formulated the following principles:

1. Where a classification singles out for differential treatment members of a group "characterized by some unpopular trait or affiliation," *New York City Transit Authority v. Beazer*, 440 U.S. 568, 593, 99 S.Ct. 1355, 1369, 59 L.Ed.2d 587, 607 (1979), or members of a "discrete and insular minority," *United States v. Carolene*

Products Co., 304 U.S. 144, 153, 58 S.Ct. 778, 784, 82 L.Ed.2d 1234, 1242 (1938), judicial review of the constitutionality of the classification must employ strict scrutiny. Under this standard of review, the political body which has enacted the legislation creating the classification must prove that the legislation bears a necessary relationship to a compelling state interest. *Dunn v. Blumstein*, 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972).

2. Similarly, where the legislation creating the classification penalizes the exercise of a fundamental constitutional right, or creates a disparity in the availability of the opportunity to exercise such a right, strict scrutiny must be employed. *Dunn v. Blumstein*, supra.

3. In all other instances, the equal protection guarantee is not violated if the classification created by the legislation bears a rational relationship to a legitimate state purpose. As this court stated in *Louisiana & Arkansas Ry. Co. v. Goslin*, 258 La. 530, 536-537, 246 So.2d 852, 854 (1971):

> "There is little dispute as to the underlying legal principles herein. It is fundamental that: 'The constitutional right to the equal protection of the laws means that every one is entitled to stand before the law on equal terms with, to enjoy the same rights, as belong to, and to bear the same burdens as are imposed upon others in a like situation. *Southern Rail-*

way Co. v. Greene, 216 U.S. 400, 30 S.Ct. 287, 54 L.Ed. 536, 17 Ann.Cas. 1247.' . . .

The constitutional restriction, however, does not operate so as to prevent a variety of classifications, or remove from the discretion of the State Legislature its right to provide a number of differences in the selection or classification of persons or property (geographical, or otherwise) so long as the discrimination is not invidious, unreasonable, or oppressive, but founded on just and equitable distinctions. In cases such as this one, where it is asserted that certain classifications or exemptions therefrom, are discriminatory and violative of the principles of 'equal protection,' the function of the courts is to determine whether the distinction is arbitrary or is based on practical and reasonable grounds with relation to the public purpose sought to be achieved by the legislation. . . ."

The minimum showing required under this test was described by the United States Supreme Court in *Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522, 528, 79 S.Ct. 437, 441, 3 L.Ed.2d 480, 486 (1959):

> ". . . Similarly, it has long been settled that a classification, though discriminatory, is not arbitrary nor violative of the Equal Protection Clause of the Fourteenth Amendment if

> any state of facts reasonably can be conceived that would sustain it. . . ."

Further, as this court noted in *Louisiana & Arkansas Ry. co. v. Goslin*, supra, it is the burden of those attacking the classification to show that there is no conceivable legitimate state purpose:

> "Of course, there exists the presumption of constitutionality, that the legislature created the classification in good faith, and that any exclusions made therefrom were for valid reasons. From this it follows that the parties attacking the statute must bear the burden of proving the facts which would render it invalid. . ." 258 La. at 541, 246 So.2d at 856.

In *Dandridge v. Williams*, 397 U.S. 471, 485, 90 S.Ct. 1153, 1161, 25 L.Ed.2d 491, 501 (1970), the United States Supreme Court further stated that "[i] the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by the laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution . . ." And in specifically addressing the issue of legislative latitude in creating classifications for taxation purposes, the Court stated in *Madden v. Kentucky*, 309 U.S. 83, 87-88, 60 S.Ct. 406, 408, 84 L.Ed. 590, 593 (1940):

". . . The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized. This Court fifty years ago concluded that 'the fourteenth amendment was not intended to compel the states to adopt an iron rule of equal taxation,' and the passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. Traditionally classification has been a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden. It has, because of this, been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it."

In applying the *Madden* test, we cannot find that plaintiffs have carried their burden of negativing every conceivable basis which might support the City's decision to distinguish between parcels of real property and

entities which are not parcels of real property, as a basis for allocating the burden of this tax. It is conceivable that the City might have determined, in attempting to provide a source of additional revenues to meet the ever-increasing demands upon its services to all its citizens, that parcels of real property are particularly easy to identify because of their current presence on the tax rolls, and that the ownership of such parcels is indicative both of some financial stability and of a long term dependency upon those city services which provide a benefit to the owners.

But it is doubtful whether plaintiffs have mounted their equal protection attack upon the ordinance on the basis of this fundamental classification into those entities which are parcels of real property and those entities which are not. Rather, it appears that their attack is directed to the nature of the class of "parcels of real property" itself, on the ground that the class includes some members of little dollar value, others of substantial value. It also appears that the district court's finding that the ordinance violates equal protection was based upon the same disparity among members of the class, for that court stated, in its reasons for judgment, that ". . . a parcel of ground as described in the ordinance and as implemented or as created by the assessors is to utterly unequal in its application as to force the conclusion that the imposition of the tax violates the equal protection requirements of the State and Federal Constitutions . . ."

In addressing this issue we must note, first, that to demand that the tax must differentially reflect differences in value is to insist that the tax must be what it is not; we have already determined that the ordinance creates a specific tax, not an *ad valorem* tax. Second, to allege constitutional infirmity because the class includes members of differing size, value, use, location and number of rental units, as plaintiffs do in brief, may be to assume, erroneously, that the reasonableness of a classification depends on whether the class is "natural" or is "unnatural" and "artificial." As one comment on equal protection requirements has noted, "[a]ll legislative classifications are artificial in the sense that they are artifacts, no matter what the defining traits may be . . . The issue is not whether, in defining a class, the legislature has carved the universe at a natural joint . . . [Rather] [a] reasonable classification is one which includes all persons who are similarly situated *with respect to the purpose of the law.*" Tussman and tenBroek, The Equal Protection of the Laws, 37 Calif.L.Rev. 341, 348 (1949). (Emphasis added). If the purpose of the ordinance is to provide revenues for the City by taxing readily identifiable units, all parcels of real property separately listed and/or assessed on the City's tax rolls are similarly situated with respect to this purpose.

Plaintiffs cannot complain of inequalities in the administration of the tax, since the $100 charge is assessed against each parcel of property. Rather, the major thrust of their attack, and one for which we are not without sympathy, appears to be that the tax has a

differential impact upon different types of property owners. For example, the owner of a small residence, of little market value, carries a relatively greater burden, with regard to the totality of his assets, than does the owner of a large, heavily exploited and highly valued commercial or rental property.

With regard to the question whether the differential impact of certain legislation violates equal protection, the United States Supreme Court recently stated, in *Personnel Administrator of Mass. v. Feeney*, ____ U.S. ____, ____, 99 S.Ct. 2282, 2292, 60 L.Ed.2d 870, 883 (1979):

> "The Equal Protection Guarantee of the Fourteenth Amendment does not take from the States all power of classification. *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 314, 96 S.Ct. 2562, [2567,] 49 L.Ed.2d 520. Most laws classify, and many affect certain groups unevenly, even though the law itself treats them no differently from all other members of the class described by the law. When the basic classification is rationally based, uneven effects upon particular groups within a class are ordinarily of no constitutional concern. *New York Transit Authority v. Beazor*, 440 U.S. 568, 99 S.Ct. 1355, 59 L.Ed.2d 587; *Jefferson v. Hackney*, 406 U.S. 535, 548, 92 S.Ct. 1724 [1732,] 32 L.Ed.2d 285. Cf. *James v. Valtierra*, 402 U.S. 137, 91 S.Ct. 1331, 28 L.Ed.2d 678. The calculus of effects, the manner in which a

particular reverbates in a society, is a legislative and not a judicial responsibility. *Dandridge v. Williams*, 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d 491; *San Antonio Bd. of Education v. Rodriguez*, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16. In assessing an equal protection challenge, a court is called upon only to measure the basic validity of the legislative classification. *Barrett v. Indiana*, 229 U.S. 26, 29-30, 33 S.Ct. 692 [693], 57 L.Ed. 1050; *Railway Express Co. v. New York*, 336 U.S. 106, 69 S.Ct. 463, 93 L.Ed. 533. When some other independent right is not at stake, see, e.g., *Shapiro v. Thompson*, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600, and when there is no 'reason to infer antipathy.' *Vance v. Bradley*, 440 U.S. 93, 99 S.Ct. 939, 59 L.Ed.2d 171, it is presumed that 'even improvident decisions will eventually be rectified by the democratic process . . .' Ibid."

On the basis of similar reasoning, in *New York City Transit Authority v. Beazer*, supra, the Court upheld a New York City Transit Authority regulation proscribing the employment of methadone users, despite the lower court's finding that a substantial proportion of the group thus barred from employment were capable of adequate job performance. The Court noted that "it is of no constitutional significance that the degree of rationality is not as great with respect to certain ill-defined subparts of the classification as it is with respect to the classification as a whole." 440 U.S. at 593, 99 S.Ct. at 1370, 59 L.Ed.2d at 607. Similarly in *Vance v. Bradley*, 440 U.S. 93, 99 S.Ct. 939, 59 L.Ed.2d 171 (1979),

the Court reversed a lower court and upheld a federal regulation which established a mandatory retirement age of sixty years for all Foreign Service personnel, but not for Civil Service personnel, even if stationed overseas. Appellants argued that the class created by the regulation was under-inclusive, in that Civil Service personnel similarly situated were not included, and over-inclusive in that some Foreign Service personnel over the age of sixty were not serving in overseas posts and/or were capable of performing their duties. The Court stated:

> "Even if the classification involved here is to some extent both under- and over-inclusive, and hence the line drawn by Congress imperfect, it is nevertheless the rule that in a case like this 'perfection is by no means required.' *Phillips Chemical Co. v. Dumas School Dist.*, 361 U.S. 376, 385, 80 S.Ct. 474, 480, 4 L.Ed.2d 384 (1960); accord, *San Antonio School Dist. v. Rodriquez*, 411 U.S. 1, 51, 93 S.Ct. 1278, 1306, 36 L.Ed.2d 16 (1973). The provision 'does not offend the Constitution simply because the classification "is not made with mathematical nicety . . ." ' *Dandridge v. Williams*, 397 U.S. 471, 485, 90 S.Ct. 1153, 1161, 25 L.Ed.2d 491 (1970), quoting *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78, 31 S.Ct. 337, 340, 55 L.Ed. 369 (1911).

. . . . .

> We accept such imperfection because it is in turn rationally related to the secondary objective of legislative convenience. . . ." 440 U.S. at 108, 109, 99 S.Ct. at 948-949, 56 L.Ed.2d at 183.

And in *Dandridge v. Williams*, 397 U.S. at 485, 90 S.Ct. at 1161, 25 L.Ed.2d at 502, the Court upheld a provision of the Maryland system for providing aid to families with dependent children which established an absolute maximum amount applicable to all families, despite the fact that families with many children had substantially greater needs than families with few children. The Court noted that "[t]he problems of government are practical ones and may justify, if they do not require, rough accommodations — illogical, it may be, and unscientific."

In *San Antonio School District v. Rodriquez*, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973), Mexican-American parents challenged, as a denial of equal protection, a system under which 20% of the funds available to each public school district were provided by revenues from the taxation of property within that district. While the system operated uniformly on all Texas public schools, the district court found that schools in districts with lower property values received proportionately less funding than schools in high property value areas, and that this disparate effect was violative of equal protection. The United States Supreme Court reversed, finding that "where wealth is involved, the Equal Protection Clause does not require absolute equality or precisely equal advantages." 411 U.S. at 24, 93 S.Ct. at 1291, 36 L.Ed.2d at 37. The Court noted that no scheme of taxation yet devised is free from all discriminatory impact, and that the mere existence of some inequality in the manner in which the state's purpose is achieved is not a sufficient basis for striking down an entire system.

The ordinance before us creates a class of parcels of real estate which has a rational relationship to a legitimate government revenue raising purpose. Within the class, all parcels are taxed equally. While it may be true that the tax has a disproportionately greater impact upon property owners with fewer financial resources, we may not find that it violates the guarantee of equal protection on this basis. Any such inequity is for the citizens of New Orleans to correct, through the elective and legislative process.

For these reasons, we have reversed the judgment of the district court and entered our decree on the 28th day of November, 1979.

APPENDIX "E"

SUMMERS, Chief Justice (dissenting).

In its decision today the Court casts aside a constitutional principle of property taxation as fundamental as any which has guided Louisiana's destiny since 1852. The principle this decision discards requires that taxation shall be equal and uniform throughout the territorial limits of the authority leveling the tax, and that all property shall be taxed in proportion to its value. La.Const. Art. 123 (1852); La.Const. Art. 124 (1864); La.Const. Art. 203 (1879); La.Const. Art. 225 (1898); La.Const. Art. 225 (1913); La.Const. Art X, §1 (1921); La.Const. Art. XIV, §16 (1974).

Today's decision does not fulfill this constitutional mandate. The City's ordinance levies a $100 charge on each owner of a "parcel" of property listed on the tax rolls of the City without regard to the value, use, size or location, whether tax exempt or not, and regardless of the assessed valuation of the property.

In doing so the ordinance relies upon Section 30 of Article VI of the Constitution of 1974 as its authority. This Section in general terms permits a political subdivision to exercise the power of taxation. What the Ordinance disregards, however, is the fact that this power of taxation is "subject to limitations elsewhere provided by this [same] constitution."

A vital cog in the City's contention is that the Constitution does not limit its authority to impose this property tax. The limitation, however, is implicit in the Constitution's provision for the manner and limits by which property taxes may be validly imposed. When the Constitution authorizes a tax on property and prescribes the conditions which must be met for its imposition those conditions are a restriction on the City's power to impose any other tax on property by any other means, except as set forth in the Constitution. *Sharp v. Police Jury*, 194 La. 220, 193 So. 594 (1940).

The surcharge imposed by the ordinance is undoubtedly a tax on property and the provision that it is payable by the owners of the property does not alter that fact. The United States Supreme Court affirms this result in *Dawson v. Kentucky Distilleries & Warehouse Co.*, 255 U.S. 288, 41 S.Ct. 272, 65 L.Ed. 638 (1921).

The millage rate of all taxes on property for general purposes are required by the Constitution to be approved by a majority of the electors voting in an election held for that purpose. La.Const. Art. 6, §26(A). The City concedes that the surcharge imposed by the ordinance is for general purposes and it concedes, as it must, that this increase of the property taxes has not been submitted to the people for their approval in an election for that purpose. The charge the Ordinance purports to impose on property is moreover imposed in utter disregard of Section 23 of Article VII of the Constitution where the method to be employed in estab-

lishing the value of property upon which the assessment of the tax is based is set forth in detail.

In effect the property owners of the City have by this Ordinance been deprived of the laws enacted for their protection. The rationale of the majority in arriving at the decision it renders must necessarily permit the City, without approval of the people, to impose an unlimited "special" tax on the property within the City for "general purposes." All of this is contrary to the fundamental principle embodied in Louisiana's organic law since 1852: Other than those methods the Constitution permits, no taxation of property is allowed.

It is also my view that the charge the City imposes by this contested Ordinance violates the equal protection guarantees of the Fourteenth Amendment to the United States Constitution and Section 3 of Article I of Louisiana's Constitution.

By a levy of $100 on each "parcel" of property listed and/or assessed[1] on the tax rolls, without regard to the value, use, size or location, whether tax exempt or not, the humble cottage of the poor must bear the identical tax burden borne by the multimillion dollar skyscraper.

It has forever been a tenet of taxation in this Nation that its citizens are entitled to equal protection of its

1 While all property is listed separately on these rolls, the rolls often do not assess a separate value to each parcel listed.

laws. The Constitutions of the United States and Louisiana guarantee this protection. Thus a taxpayer is protected from any governmental action which discriminates against him by subjecting his property to taxes not imposed on others in the same class or arbitrarily and irrationally imposed unequally among those in the same class. *Bussie v. Long*, 286 So.2d 689 (La. 1973), writ denied Jan. 25, 1974.

A taxpayer under this protection is entitled to have his property taxed at the percentage of value applicable to others equally and similarly situated, even though statutory law may provide otherwise. In effect, a reasonable and rational equality and uniformity of taxation must be achieved to support the validity of the tax, otherwise the door to equal justice is closed and the opportunities for abuse are without restraint. *Sioux City Bridge Co. v. Dakota County, Nebraska*, 260 U.S. 441, 43 S.Ct. 190, 67 L.Ed. 340 (1923).

While the City's position may be that the tax is modest and will impose no hardship, the record does not negative the conclusion that hardship will result. In any event the fact remains that the Constitution is violated.

I would affirm the decision of the trial court and require that the taxpayers who have paid the tax be reimbursed by the City the amounts paid with legal interest from date of payment.

BLANCHE, Justice (dissenting).

The nature of the tax should be determined by its incidence, and the tax here, in its true sense, is a property tax which effectively circumvents the concept of "ad valorem" property taxes to support general revenues. The constitutional safeguard of a vote by property owners with regard to the imposition of such a tax has been eroded and now, when the City of New Orleans desires additional revenue from property owners, it may be accomplished by the expediency of a mere majority vote in the city council. Next year, it may be decided that another $100 is needed and the next year, another $100, and the only check against this power of taxation is the point at which such taxes become confiscatory. Whatever that point may be will be left to the judgment of some court instead of the citizens who have to pay the tax.

I agree that the City of New Orleans under the provisions of its Home Rule Charter has the authority to tax its citizens within constitutional limitations; but the inequity, unfairness and grossly disproportionate differences created by this tax, in fact, treats its citizens unequally and denies them equal protection of law.

For these reasons, I respectfully dissent.

LANDRY, Justice Ad Hoc, concurring in part and dissenting in part.

I concur in the majority holding that the ordinance in question does not impose an ad valorem tax and that it does not violate the provisions of La.Const. 1974, Article 6, Section 26(A) and Section 27(A) which limit the levy of ad valorem taxes. Because of the unique provisions of the home rule charter of the City of New Orleans, I also concur in the majority view that the ordinance is not ultra vires and does not contravene the provisions of La.Const. 1974, Article 6, Section 30.

I dissent, however, from the majority holding that subject ordinance does not violate the equal protection clauses of the Fourteenth Amendment to the United States Constitution and Article 1, Section 3, Louisiana Constitution, 1974.

While total equality is not required in tax matters, there must, nevertheless, be some rational basis for distinctions or inequalities included in or resulting from a tax levy.

As applied to tax laws, equal protection provisions of the United States and state constitutions permit classification of property. State legislatures have broad discretion in adopting such classes which need not be scientifically exact, provided they are not arbitrary, not intentionally discriminatory and are based on differences having a substantial and fair relation to the object

of the legislation so that all persons similarly situated are treated alike. The tax need not operate equally throughout a taxing area or district, provided it is equal as to all persons within a particular district. *Ohio Oil Company v. Conway*, 281 U.S. 146, 50 S.Ct. 310, 74 L.Ed. 775 (1930).

A tax levied by reason of ownership of property is a tax on the property itself. *Dawson v. Kentucky Distillers Warehouse Co.*, 255 U.S. 288, 41 S.Ct. 272, 65 L.Ed. 638 (1921).

The City of New Orleans concedes that subject tax is imposed on parcels of land regardless of value, size or use and also irrespective of whether a parcel is improved or unimproved. A parcel is defined as "each parcel separately assessed on the tax rolls of the City of New Orleans —". It is conceded also that the City of New Orleans relies on the local assessing authority, and accepts the designations of parcels made by the assessors. Whatever plots of combinations of plots of ground are assessed as a single parcel for tax purposes, is deemed a single parcel for the purpose of imposition of the tax at issue herein.

The record shows that pursuant to subject ordinance, the owner of a subdivision containing 100 lots assessed as one parcel, will pay a tax of $250.00 notwithstanding each lot will be subject to an assessment of $100.00 as the owner sells each unit of his subdivision.

It is also shown that a particular apartment complex containing 22 acres located on five city squares, on which are situated 794 rental units, and which is assessed at $10,000,000.00, is assessed as one parcel and will be taxed for $100.00 under the ordinance. At the same time, a single family residence, in the same subdivision, having an assessment of $75,000.00 will also be taxed $100.00. The testimony further reveals that a single family residence situated on two lots may be taxed $200.00 because each lot is assessed separately.

Additionally, it is shown that under the ordinance it is possible that an ownership of 30 separate parcels of land may be separately assessed as 30 separate parcels each of which would be taxed $100.00, or the same 30 parcels may be assessed as a single parcel taxed only for $100.00.

Based on these showings, I conclude that the tax burden thus imposed is so utterly disproportionate as to be completely devoid of a rational basis. In my judgment, the ordinance clearly promotes a totally indefensible inequity among owners of parcels of land.

I find no merit in Appellant's argument that the tax is fair and equitable because each owner of a single parcel is treated equally in that each is taxed the same amount. On the contrary, I find the tax arbitrary because it fails to create distinctions under circum-

stances where classification and differentiation is required to avoid an inequitable and unjust result. In my opinion, the equal protection clauses protect against inequality resulting from a failure to distinguish where such failure results in a totally disproportionate distribution of a tax burden.

I respectfully dissent in part.

APPENDIX "F"

ACORN for Itself and its Members,
PAUL COX, STEVE HOLT, BEULAH LABOSTRIE
and BRENDA QUANT,
Plaintiffs and Appellees,

versus No. 66188

CITY OF NEW ORLEANS, ERNEST MORIAL,
SIDNEY BARTHELEMY, JOSEPH GIARRUSSO,
FRANK FRIEDLER, JIM SINGLETON,
MIKG EARLY, BROD BAGERT, PHILIP CIACCIO,
ERROLL WILLIAMS and PATRICK KOLOSKI,
Defendants and Appellants,

CONSOLIDATED WITH

MRS. ROSEMARY BAYOLO, Wife of/and
JOSEPH S. GEECK, JR.,
Plaintiffs and Appellees,

versus No. 66189

ERROL WILLIAMS, Director of Finance
of the City of New Orleans, et al.,
Defendants and Appellants,

CONSOLIDATED WITH

MRS. JANET, Wife of/and
EDWIN H. HEATON, et al.,
Plaintiffs and Appellees,

versus No. 66190

ERROLL WILLIAMS, Director of Finance
of the City of New Orleans et al.,
Defendants and Appellants,

CONSOLIDATED WITH

JACKSON HOMESTEAD ASSOCIATION,
Individually and on Behalf of Others
Similarly Situated, and on Behalf of
Certain of its Borrowers and
SOUTH PINES, INC., Individually
and on Behalf of Others Similarly Situated,
Plaintiffs and Appellees,

versus No. 66191

ERROLL WILLIAMS, Director of Finance
of the City of New Orleans et al.,
Defendants and Appellants.

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

NOTICE is hereby given that Rosemary Bayolo, wife of/and Joseph S. Geeck, Jr., Mrs. Janet, wife of/and Edwin H. Heaton et al., and Jackson Homestead Association, each individually and on behalf of the classes that they represent, the appellees above named, hereby appeal to the Supreme Court of the United States from the final judgment of the Louisiana Supreme Court reversing judgment of the Civil District Court

for the Parish of Orleans and dismissing this action that was entered in this action on the 11th day of January 1980.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

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SUPREME COURT OF LOUISIANA
FILED: FEB. 6, 1980

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Clerk

Supreme Court, U.S.
FILED
MAY 1 1980
MICHAEL RODAK, JR., CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1979

NO. 79-1549

ACORN for Itself and its Members,
PAUL COX, STEVE HOLT, BEULAH LABOSTRIE
and BRENDA QUANT,
Plaintiffs and Appellants,

versus

CITY OF NEW ORLEANS, ERNEST MORIAL,
SIDNEY BARTHELEMY, JOSEPH GIARRUSSO,
FRANK FRIEDLER, JIM SINGLETON,
MIKE EARLY, BROD BAGERT,
PHILIP CIACCIO, ERROLL WILLIAMS
and PATRICK KOLOSKI,
Defendants and Appellees,

CONSOLIDATED WITH OTHERS

On Appeal from the Supreme Court of the State of Louisiana

MOTION OF APPELLEE TO DISMISS APPEAL OR TO AFFIRM

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IN THE

SUPREME COURT OF THE UNITED STATES

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Plaintitfs and Appellants,

versus

ERROLL WILLIAMS, Director of Finance of the City of New Orleans, et al.,
Defendants and Appellees,

On Appeal from the Supreme Court of the State of Louisiana

MOTION OF APPELLEE TO DISMISS APPEAL OR TO AFFIRM

Appellee moves the Court to dismiss the appeal on the ground that this appeal does not present a substantial federal question or, in the alternative, to affirm the judgment sought to be reviewed on appeal on the ground that it is manifest that the questions on which the decision of this cause depend are so well settled as not to warrant further argument.

I.
OPINION BELOW

The opinion of the Civil District Court, Parish of Orleans, is not reported but can be found in Appendix C. of appellant's jurisdictional statement.

The opinion of the Supreme Court of Louisiana is reported as *Acorn v. City of New Orleans*, 377 So.2d 1206 (La. 1980).

II.
JURISDICTION

The jurisdictional requisites are adequately set forth in appellant's jurisdictional statement.

III.
QUESTIONS PRESENTED

(1) Whether City of New Orleans Ordinance No. 7009, M.C.S., as amended, violates the equal protection clauses of Amendment XIV § 1 of the United States Constitution.

(2) Whether imposition of the tax authorized by Ordinance No. 7009, M.C.S. as amended, violates the taxing scheme provided by the Louisiana State Constitution and thereby denies taxpayers due process of law.

IV.
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent provisions of the United States Constitution and of Ordinance No. 7009, M.C.S. as amended, are set forth in appellant's jurisdictional statement.

V.
STATEMENT OF THE CASE

On December 28, 1978, the Counsel for the City of New

Orleans passed, and thereafter the Mayor signed, Ordinance No. 7009 M.C.S.; subsequent thereto the Council passed Ordinance Nos. 7110, 7280 and 7286 M.C.S., which amended Ordinance No. 7009 M.C.S. The Ordinance, as amended, levies an annual special real property service charge of $100.00 on the owner of each parcel of real property owned by him separately listed and/or assessed on the Tax rolls of the City of New Orleans for the year of 1979 and for each year thereafter.

Plaintiff, ACORN, a nonprofit politically oriented citizens' group filed a petition on February 9, 1979, attacking the constitutionality of Ordinance No. 7009 M.C.S., as amended, alleging that the Ordinance was violative of the equal protection clauses of the United States and Louisiana Constitution. Subsequent thereto, numerous suits were filed attacking the constitutionally of the Ordinance. The above captioned cause was allotted to Division "E" of the Civil District Court for the Parish of Orleans, the Honorable Gerald Federoff presiding. Upon motion of the City of New Orleans said cases were consolidated for trial. The matter was certified as a class action and a trial on the merits was held on November 12, 1979.

After due proceedings the court rendered judgment determining that Ordinance No. 7009 M.C.S., as amended, was violative of the equal protection clauses of the United States and Louisiana Constitutions. The trial court's decision was appealed to and overturned by the Louisiana Supreme Court which held that the $100 special real property service charge was a specific tax and that the imposition of the charge

was a valid exercise of the taxing powers of the City of New Orleans. The Court further held that the class of parcels of real property, created by the Ordinance, had a rational relationship to a legitimate government revenue raising purpose and was not violative of the Federal and State Constitutional guarantees of equal protection and due process.

VI.
ARGUMENT

In imposing a uniform charge upon the ownership of each parcel of land, the City has satisfied the constitutional requirement of equal protection.

Two tests are traditionally applied in equal protection analysis - the "rational basis" and "strict scrutiny" standards. Laws are tested by the strict scrutiny of courts where they involve an inherently suspect classification (e.g. race) or a fundamental interest (e.g., first amendment freedoms). Ordinance, No. 7009 M.C.S., as amended, involves neither a suspect classification nor a fundamental interest. Accordingly, it need only withstand the rational basis test of equal protection analysis i.e., whether the challenged state action rationally furthers a legitimate state purpose or interest. *McGinnis v. Royster,* 410 U.S. 263, 270, 93 S.Ct. 1055, 1059 (1973), cited in *San Antonio Ind. School Dist. v. Rodriguez,* 411 U.S. 1, 55, 93 S.Ct. 1278, 1308 (1973).

However, as has been noted by this Honorable Court, in the area of taxation, even greater leeway is given to state and local governments in creating classifications.

" The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized. This Court fifty years ago concluded that 'the fourteenth amendment was not intended to compel the states to adopt an iron rule of equal taxation,' and the passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. Traditionally classification has been a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden. It has, because of this, been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionally can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. *The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it.*"

Madden v. Kentucky, 309 U.S. 83, 87-88, 60 S.Ct. 406, 408, (1940) (emphasis supplied). In spite of this plenary grant of discretionary latitude to tax-enacting bodies, appellants assert that the ordinance, imposing a tax of $100 on each parcel of real property separately listed and/or assessed on the tax rolls of the City of New Orleans is not founded upon a *reasonable* distinction because said class includes properties of a diverse nature, i.e., all parcels regardless of physical size or development. (Appellant's Statement as to Jurisdiction page 14).

It has been unclear throughout the course of this litigation, even to the Louisiana Supreme Court, whether appellants have directed their equal protection against the distinction of the class of real property from all other property or against the nature of the class of "parcels of real property" as defined by the Ordinance. See *Acorn v. City of New Orleans,* 377 So.2d at 1216 (La. 1980). In either instance appellant's cause must fail.

If appellant's attack is on the distinction of the class of real property from all other types of property then appellants have failed to meet the test of *Madden* by not negativing every conceivable basis which might support the City's classification, and thus fail to present a substantial federal question.

An attack on the nature of the class on the ground that it includes properties of different values must likewise fail in light of the line decisions this Court has rendered. Legislation may operate with varying effect upon different members of a class and not run afoul of equal protection doctrines thereby.

In the case of *Great Atlantic and Pacific Tea Company v. Grosjean,* 301 U.S. 412, 57 S.Ct. 772 (1937), this Court held that the Louisiana chain store tax, (a specific tax as distinguished from an ad valorem tax) which was based upon the number of stores owned and which imposed a higher rate-per-store upon the ownership of a large number of stores, did not violate equal protection. In reviewing the chain store tax, the Court stated, at 301 U.S. 424, 57 S.Ct. 776:

> "We cannot say that classification of chains according to the number of units must be condemned because another method more nicely adjusted to represent the difference in earning power of the individual stores might have been chosen, for the legislature is not required to make meticulous adjustments in an effort to avoid incidental hardships. It is enough that the classification has reasonable relation to the differences in the practices of small and large chains. The statute bears equally upon all who fall into the same class, and this satisfies the guaranty of equal protection."

The chain store tax is analogous to the tax *sub judice* in that a "parcel of land", like a store, is a unit which can properly be the subject of a uniform specific tax without regard to the size or value of each unit subject to the tax. Such a method of classification for tax purposes does not violate equal protection.

In upholding the constitutionally of the special real property service charge the Louisiana Supreme Court examined several United States Supreme Court cases, among them, *Dandridge v. Williams*, 397 U.S. 471, 90 S.Ct. 1153 (1970), and *San Antonio School District v. Rodriguez*, 411 U.S. 1, 93 S.Ct. 1278 (1973), (both of which dealt with unequal treatment of members within a class), and concluded that:

> "The ordinance before us creates a class of parcels of real estate which has a rational relationship to a legitimate government revenue raising purpose. Within the class, all parcels are taxed equally. While it may be true that the tax has a disproportionately greater impact upon property owners

> with fewer financial resources, we may not find that it violates the guarantee of equal protection on this basis. Any such inequity is for the citizens of New Orleans to correct, through the elective and legislative process." *Acorn v. City of New Orleans*, 377 So.2d at 1218 (La. 1980).

With regard to the question whether the differential impact of certain legislation violates equal protection, this Court recently stated, in *Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256, 99 S.Ct. 2282, 2292, 60 L.Ed.2d 870, 883 (1979):

> "The Equal Protection Guarantee of the Fourteenth Amendment does not take from the States all power of classification. Most laws classify, and may affect certain groups unevenly, even though the law itself treates them no differently from all other members of the class described by the law. When the basic classification is rationally based, uneven effects upon particular groups within a class are ordinarily of no constitutional concern. The calculus of effects, the manner in which a particular law reverberates in a society, is a legislative and not a judicial responsibility." (Citations omitted)

Appellant's argument is one that this Court has heard, scrutinized and ruled upon often. Their appeal presents no novel question of law, no example of invidious discrimination and no showing of unusual or extraordinary burdens upon the members of the taxpaying class. There is, therefore, no need for further argument in this matter.

Appellants have further asserted that the imposition of the instant tax violates the taxing scheme of the Louisiana State Constitution and thereby denies New Orleans's taxpayers due process of law. The trial court, the majority of the Louisiana Supreme Court and two of its three dissenting justices found that the real property charge is a valid exericse of the taxing powers of the City of New Orleans. The tax was imposed by duly elected representatives in accordance with the constitution and laws of the State of Louisiana.

Further, Appellants, in part VII of their Statement as to Jurisdiction, fail to set forth any law or argument for the alleged violation of due process. The "federal question" they posit is entirely insubstantial and should not sustain a finding of appellate jurisdiction.

VII.
CONCLUSION

Appellees respectfully submit that, insofar as appellants assert the invalidity of the class created by the Ordinance No. 7009 M.C.S., as amended, in question or the invalidity of the method of the imposition of the tax it creates, appellants fail to present a substantial federal question to this Honorable Court.

Appellees further respectfully submit that, appellants' assertion that uneven effects upon particular groups within a class strike the classification with nullity as violative of equal protection, presents a question well settled against them by this Court.

WHEREFORE, appellees pray that this appeal be dismissed or in the alternative, that the opinion of the Louisiana Supreme Court be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that three copies of the above anf foregoing pleadings has been forwarded to Mr. Stephen R. Bachmann, 628 Baronne Street, New Orleans, Louisiana 70113; Mr. Arthur Ballin, Mr. Frank Dudenhefer, Suite 1121, Carondelet Building, 226 Carondelet Street, New Orleans, Louisiana 70130; Mr. Alvin R. Childress, III, 234 Loyola Avenue, New Orleans, Louisiana 70112; Mr. John F. Robbert, 1304 First N.B.C. Building, New Orleans, Louisiana 70112; Mr. Eugene G. Taggart, Monroe and Lemann, 1424 Whitney Building, New Orleans, Louisiana 70130; and Mr. Norris S. L. Williams, Mr. Gregory C. Thomas, Chaffe, McCall, Phillips, Toler and Sarpy, 1500 First N.B.C. Building, New Orleans, Louisiana 70112, by depositing three copies of same in the U.S. Mail postage prepaid, this 30th day of April, 1980.

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